

(1985) 03 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 139 of 1979

Srish Chandra Choudhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 18-03-1985

Acts Referred:

Constitution of India, 1950 — Article 342, 366(25)
Evidence Act, 1872 — Section 115

Citation : AIR 1987 Guw 24

Hon'ble Judges : S. Haque, J;K.N. Saikia, J

Bench : Division Bench

Advocate : H.M. Lahiri, S.K. Homchoudury, G.N. Sahhwalla, A. Bhattacharjee and A. Dutta, for the Appellant; D.P. Kundu, General, Tripura, B. Das, S. Deb, Government Advocate, Tripura and S. Ali, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Saikia, J.—The writ petitioner as the General Secretary, Deshi Tripura (Laskart Upajati Kalyan Samity, Agartala impugns the cabinet decision of the Government of Tripura, dt. 11-8-1975 to the effect that the Deshi Tripura (Laskar community), a community described as Laskar Kshatria and Deshi Tripura was not covered by the terms mentioned in the Presidential Scheduled Tribes Orders of 1951, 1956 and 1976 for Tripura; and the instructions issued by the Government of Tripura dt. 27-9-1978 not to issue Scheduled Tribe Certificates to the members of that community. The only question to be decided is whether the Deshi Tripura (Laskar) community is included within the Tripura, Tripuri, Tippera tribal community of Tripura.

2. The petitioner belongs to the Deshi Tripura (Laskar) community, commonly known and hereinafter referred to, as "Laskar" community. Mr. N. M. Lahiri, the learned Advocate General, Meghalaya for the petitioner submits that the "Laskar" community is part and parcel of the Tripura, Tripuri, Tippera tribal

community of Tripura; and that the Deshi Tripura (Laskar) Upajati Kalyan Samity, Agartala, which was formed in 1956, looks after the interests of the members of that community; and the petitioner as its General Secretary, has been authorised by the members thereof to vindicate their grievances in all forums. Counsel submits, inter alia, that the Tripura, Tripuri, Tippera Tribal community has been recognised and listed as Scheduled Tribe in the State of Tripura in the Constitution (Scheduled Tribes) (Union Territories) Order 1951, the Scheduled Castes and Scheduled Tribes List (Modification) Order, 1956 and in the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and that the Laskar community has all along been recognised by the Tripura, Tripuri, Tippera community as a part and parcel of their community. The erstwhile rulers of Tripura also recognised it as such and extended all kinds of benefits, facilities and privileges to its members. After Tripura was merged with the Indian Union, the same position continued as would be apparent from the Tripura Government Revenue and General Department Circular No. 9 (annexure-I to the petition) published in the Tripura State Gazette on 30th Agrahayan 2nd fortnight of 1340 T.E. (Tripura Era) to the effect that Shri Shri Jukta Maharaj Manikya Bahadur has expressed his desire to collect clear informations about Census of race, religion and class of the Tribals and that "Tripura samapradaya¹, as stated in that circular, meant the following 5 (five) communities, namely, (1) Puratan Tripura, (2) Deshi Tripura (Related to Laskar Class), (3) Noatia, (4) Jamatia, and (5) Reang. It was directed therein that all belonging to Tripura class should be recorded as Kshatriyas and the Tripura Kshatriyas included both Tripura Kshatriyas (old Tripura) and Tripura Kshatriyas (Deshi Tripura). Similarly in circular No. 10, dt. 15th Magh. 1350 T. E. (Annexure II to the petition) instructions were issued to persons engaged in collecting correct informations about the religion and the class of the Tribal residents of Tripura; and in para (2) thereof it was stated that in Tripura Tripura-Kshatriyas denoted the following classes : (1) Puratan Tripura, (2) Deshi Tripura (related to Laskar class), (3) Noatia, (4) Jamatia, and (5) Reang. In the Rajmala (chronicles of the Rulers) Laskar has been described as warriors and in Form No. 1 of the Education Department of the Tripura Government Laskar was included in the column meant for Tripura Scheduled Tribes. The petitioner's case is that this state of affairs continued when Tripura merged with the Indian Union.

3. When the draft Constitution of India was published, Tripura was not a part of the Indian Union. Sub-article (1) of Article 303 of the draft Constitution defined "Scheduled tribes" to mean the tribes or communities specified in Parts I to IX of the Eight Schedule in relation to the States for the time being specified in Part I of the First Schedule to which those Parts respectively related. Tripura was not included in the First Schedule. After merger of Tripura by virtue of Tripura Merger Agreement dated 9-9-49 with effect from 15-10-49 Tripura had become one of Part C States within the Indian Union. Clause (25) of Article 366 of the Constitution of India defined "Scheduled Tribes" to mean such tribes or tribal communities or parti of or groups within such tribes or tribal communities as

were deemed under Article 342 to be Scheduled Tribes for the purpose of the Constitution. Article 342(1) empowered the President with respect to any State, and where it was a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof, by public notification, to specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which should for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to that State. Under Sub-article (2) of Article 342 the Parliament could 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. The above provision was not applicable to Part "C" State where there was neither a Governor nor a Rajpramukh. Tripura had only a Chief Commissioner. The Constitution (First Amendment) Act, 1951 amended Article 342 of the Constitution substituting the words "may with respect to any State, and where it is a State specified in Part A or Part B of the First Schedule, after consultation with the Governor or Rajpramukh thereof for the words "may, after "consultation with the Governor or Rajpramukh of a State" but still it did not provide for Part C States. The Constitution (Scheduled Tribes) Order, 1950 did not include the Scheduled Tribes of Tripura, The Constitution (Scheduled Tribes) (Para C States) Order, 1951 included the scheduled tribes of Tripura in Part VII thereof. Entry 15 simply mentioned Tripura, 16 Jamatia and 17 Noatia. This list was substituted by Scheduled Castes and Scheduled Tribes Lists (Modification), Order, 1956 where No. 15 included Tripura or Tripuri, Tippera. The Constitution (Seventh Amendment) Act, 1956 amended Article 1 of the Constitution and the First Schedule. Tripura, which immediately before the commencement of the Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura became a Union Territory. Section 26 of the North-Eastern Areas (Reorganisation) Act, 1971 amended the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. In the Fourth Schedule Part HI was Tripura and a list was appended to it. In Sl. 15 was Tripura or Tripuri, "Tippera" in the same line. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 amended the entry by removing the word "or" and putting a comma instead, the entry now reading; Tripura, Tripuri, Tippera.

4. According to Mr. Lahiri, the Government of Tripura had been consistently and persistently treating the Laskar community as a Scheduled Tribe and had been issuing Scheduled Tribe Certificates, granting scholarships and making appointments and promotions on that basis. The turning point came with Annexure-X, which is letter No. 20126-46/TW/6-4/LD/78 dt 22-9-78 issued by the Director of Welfare for Scheduled Tribes and Scheduled Castes, Tripura to the District Magistrate and Collector, West Tripura, Agartala stating that Laskar (Deshi Tripura) community has never been included as a Scheduled Tribe. This itself, he says, was the culmination of a process to deprive the Laskar community

of the legitimate rights.

5. It appears that in the year 1954, the Tripura Administration Tribal, Welfare Department sent an additional list to the Backward Classes Commission for inclusion of the Laskar community in the list of "Backward Classes" and it was accordingly included among the other Backward Classes of Tripura on the recognition of the Backward Classes Commission. By its memorandum No. F. 6I(i)-TRB/55, dt. 26th July, 1958, the Assistant Secretary to the Tripura Administration Tribal Welfare Department wrote to the Under Secretary to the Government of India, Ministry of Home Affairs, New Delhi that the name of "Laskar Community" was wrongly included in that list as the Census report of Tripura State for the year 1340 T.E. corresponding to 1930 AD and the aforesaid circular No. 10 dt. 15th Magh, 1350 E.E. corresponding to February, 1941 AD and the Tripura State Government Form No. 1 of the Education Department would establish that "Laskar" was a section of "Tripura"; which was a Scheduled tribe and was entitled to all the rights and privileges admissible to the Scheduled Tribes. Accordingly it was requested that the name of the community be struck off from the list of the other Backward Classes. This was followed by another D. O. No. FXV(1)-TRV/60, dt. 29-4-1960 from the Chief Secretary wherein it was stated that the members of the "Laskar" community had all along been treated as a section of the Scheduled Tribe Tripura" and it was decided to include them in the list of Scheduled Tribes and members of the Scheduled Tribe by specifying the tribe Tripura so as to cover all the sub-tribes, namely, Puratan Tripura, Deshi Tripura (Laskar), Jamatia and Noatia. The request to amend the list of the Other Backward Classes by deleting the "Laskar" community and including it in the list of Scheduled Tribes under the tribe Tripura was reiterated in D. O. No. 14/11/59-SCT-IV, dt. 5th May, 1960. The Deputy Secretary to the Government of India, Ministry of Home Affairs, wrote to the Chief Secretary, Tripura Administration stating that the tribe Tripura" already included or the various sub-tribes such as Puratan Tripura and Deshi Tripura (Laskar) and Jamatia and Noatia are mentioned separately in the Schedule; and that there was no need to mix them up with the problem of Laskars and there should be no difficulty in giving to the Deshi Tripura (Laskar) tribe the benefits of the schemes of the Scheduled Tribes; and that as there was no separate community called Laskar other than Deshi Tripura (Laskar) who were already covered by the mention of Tripura" amongst the Scheduled Tribes, the Laskar community in the List of Other Backward Classes could be ignored. By Memo No. F.XV(1)-TRB/60, dt. 10th Nov. 1960 (Annexure VI to the petition) the Tripura Administration Tribal Welfare Department informed for action by Tripura Government Departments that a proposal was sent to the Government of India for inclusion of the Laskar community in the list of Scheduled Tribe. In D. O. No. F. XV(1)-TRB/60, dt. 8th Dec. 1960 (Annexure-VII to the petition) the Chief Secretary of Tripura Administration" informed Dr. Phani Bhusan Dass, Secretary Deshi Tripura (Laskar) Tribes, Agartala with reference to his letter No. 58 dt. 29th Sept. 1960 that Deshi Tripura (Laskar) Tribe was already covered by the tribe "Tripura"

which was included in the list of Scheduled Tribes; and the Census Superintendent as well as other Heads of Departments had been accordingly informed. According to the petitioner it was only by the Government of India, Ministry of Home Affairs memorandum No. 12017/10/75-SCT. 1 dt. 28th Jan.. 1976 (Annexure-VIII to the petition) the Under Secretary to the Government of India, Ministry of Home Affairs wrote to the Chief Secretary, Government of Tripura that the District Magistrate of West Tripura had issued a certificate to one Shri Krishnananda Laskar to the effect that he belonged to the Deshi Tripura (Laskar) as Scheduled Tribe as recognised under the Scheduled Castes and Scheduled Tribes (Lists) -- Modification Order, 1956, but the Constitution (Scheduled Tribes) Order, 1950, as modified by the aforesaid Modification Order, 1956, did not include the name of Deshi Tripura (Laskar community) which mentioned only Tripura or Tripuri, Tippera as Scheduled Tribe in Tripura; and that the validity of the aforesaid Scheduled Tribe Certificate could be questioned; and hence it should be investigated and should be issued only if he was found to belong to the "Tripura" or "Tripuri" or "Tippera" community by birth and till then the certificate was not being accepted. Thereafter the District Magistrate and Collector, West Tripura by his letter No. 1529-1526/DM/OL/1-17-73, dt. 5th April, 1977 wrote to the Sub-Divisional Officer, Sadar/Sonamura/Khowai that thenceforth Tribal Certificate should be issued to the Deshi Tripura (Laskar community) as "Tripura" or "Tripuri" "Tippera" instead of Deshi Tripura (Lasker community) after proper inquiry in each individual case.

6. It further appears that the Council of Ministers of Tripura Government took a decision on 31-1-1976 observing that the Laskar community did not ethnically and linguistically belong to any of the Scheduled Tribes and hence the matter should be examined and steps should be taken to "deschedule" them by making reference to the Government of India; that the Scheduled Tribe Certificates should be issued by exercising extreme caution. Again on 14-12-1976, the Cabinet decided that the notification to the above effect should be issued immediately; and that the Union Government should be advised that the Presidential Order listing Scheduled Tribes of Tripura included the Tripuri community as Tripura, Tripuri and Tippera; and the community described as Laskar, Laskar Kshatriya and Deshi Tripura was not covered by the terms mentioned in the order.

7. Pursuant to the above cabinet decisions the Director of Welfare for Scheduled Tribes and Scheduled Castes, Tripura by his Memo No. 20126-46/TW/6-4(L-D)/78, dt. 22nd Sept., 1978 wrote to the District Magistrate and Collector, West Tripura, Agartala that the Laskar (Deshi Tripura) Community had never been included as a Scheduled Tribe in any of the Presidential Scheduled Tribes Orders of 1951, 1956 and 1976. Therefore the impugned D. O. Letter No. 12016/24/77-SCT-V, dt. 27th Sept, 1978 was issued instructing the Schedule Tribe Certificate issuing authorities so that the persons of Laskar, Laskar Kshatriya and Deshi Tripura communities might not get Scheduled Tribe Certificates by misrepresentation as belong to the Tripura, Tripuri and Tippera community. This

was followed by another instruction in No. 25953-26063/TW/6-4(L-A)/78, dt 21st Nov. 1978 to the effect that the person belonging to "Laskar (Deshi Tripura) Community might not get Scheduled Tribe Certificates; and that the instruction be strictly adhered to while issuing such certificates. Ultimately by Memorandum No. 18887-19077/TW6-4(L-D)/79 dt. 28-4-79 (Annexure-XIII) it was stated that after examination of the matter in consultation with the Law Department it had been decided that the certificates issued by various authorities of Tripura to the "Laskar Community" as Scheduled tribes are to be treated as infructuous. Hence this petition.

8. On the basis of the above facts Mr. Lahiri submits that the President of India himself did not know who were the Scheduled Tribes in Tripura and naturally the Chief Commissioner of Tripura was consulted and it was the State Government which knew who were the tribes, sub-tribes or groups of tribes or sub-tribes included within the tribe Tripura as was first included in the Constitution (Scheduled Tribe) (Part C States) Order, 1951. The same was the position when after the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 changed the entry 15 to Tripura or Tripuri, Tippera. After the North-Eastern Areas (Reorganisation) Act also in the Fourth Schedule the entry appeared in the same form. Similarly, after the amendment in 1976 when the word "or" between Tripura and Tripuri was substituted by comma and the entry appeared as Tripura, Tripuri, Tippera it was the State Government which knew who were included. The tribes or tribal communities or groups of tribes or tribal communities included within the entry could not have been changed in course of time without there being a change made by the Parliament. Circular Nos. 9 and 10 left no doubt that the Tripura Kshatriya denoted both Puratan Tripura and Deshi Tripura (related to Laskar community). On the basis of the Annexures 1 to 9 Mr. Lahiri submits that the State Government had constantly been treating the Deshi Tripura (Laskar community) as to have belonged to the Scheduled tribe of Tripura. If ethnically and linguistically they did not belong to the Scheduled tribe, as has been contended now, the Government could have de-scheduled the community. But that could have been done only by the Parliament and not by Executive Orders of the State. There could be no question of de-recognising the community unless they were already recognised and if they were already recognised, the State Government did not have the power, as the Parliament only had, to de-recognise them. In the "Rajmala" and the subsequent Census reports the appellation Tripura Kshatriya, according to Mr. Lahiri, always included the Deshi Tripura Laskar community. In the "Census Bibarani" of the Kingdom of Tripura of 1340 T.E. published in 1343 T.E. from its Census Office, at page 67 we find that the community Deshi Tripura has evolved by mixture between Hindu Bengali and the Tripura race. The Deshi Tripuras belonged to a different society than the other Tripuras. Their predominance was noticed in Agartala town, Sadar Division, Sunamura Division, and Udaypur division. The population was calculated at 1494 out of which 821 were males and 673 females. In the Tripura district their population was estimated at 1300. We further find that their social customs and

practices were like those of the Bengalis though there were slight mixture of local and ethnic customs. Their marriage and sradh and social functions were performed in the Bengali system. Women in dress and family living were similar to Bengalis. In religious practices they were like the Bengali Hindus. Among them "Saktas" and "Baishnabas" were to be noticed, the former being in the majority; about 1453 being Saktas and 41 being Baishnabas. They carried on agriculture, but the jhum system was not prevalent among them. Weaving was carried on with little of other cottage industries. Their main occupations were agriculture, cattle breeding, money lending and trade. They were inclined towards education. About 358 of them could write and read Bengalis; and Bengali was their language. Similarly in the 1961 Census, Tripura Kshatriya included the Deshi Tripura. So was the position, according to Mr. Lahiri, in the Tripura District Gazetteer. In Hunter's A Statistical Account of Bengal (page 358) the following description is found :

"The Tipperah tribes, says Captain Lewin, "recognise no generic term by which their race may be designated. If you ask a man of what race he is, he will tell you the name of his clan, Puran, Csuie, or whatever it may be, but if he is speaking Bengali, he will use the generic term Tipperah.""

We also find that "when in 1765 the District of Tipperah came under the control of the East India Company, more than one-fifth of the present area was under the immediate rule of the Raja of Hill Tipperah, who merely paid a tribute of ivory and elephants". In the Tribal Movement of India, edited by Mr. K.S. Singh, the Deshi Tripura is mentioned among the Tripura. It appears that older is the book lesser is the discussion on "Deshi Tripura" and newer is the book wider is the discussion on "Deshi Tripura". In R.H. Snyder Hutchinson's Chittagong Hill Tracts, which was first published in 1909 (pages 36 to 38), we find : "The Tipperas in the Chittagong Hill Tracts number 23, 341 and are scattered throughout the district. This tribe is also called Tripura and is divided into two classes, the Purana or Tippera proper and the Jamatias". Similarly, in the Tripura District Gazetteers published in 1975, at page 143, we find under one heading Tripura, Natun Tripura and Puraton Tripura. The question, therefore, is who then were included in the appellation Tripura? The Tripura King, it is submitted, accepted the Deshi Tripura as their own people. The fact that the royal family of Tripura changed their social manners and habits and started speaking Bengali, it is submitted, did not in any way prevent them from being tribals. The fact that Deshi Tripuras speak Bengali and adopted Hindu Bengali manners of custom would not similarly, it is submitted, prevent the Deshi Tripura from belonging to Tripura tribe for the purpose of the Scheduled Tribes Order.

9. According to Mr. Lahiri to decide whether the Laskar community belonged to the Tripura tribal community it would be necessary to find out whether the former was accepted into its fold by the latter community as was held by the Supreme Court (sic) in Wilson Read v. C.S. Booth AIR 1958 Gau 128, and other cases. In that case the question was whether the appellant born of English father

and Khasi mother belonged to Khasi tribe within the meaning of Article 342 of the Constitution and the Constitution (Scheduled Tribes) Order, 1950, Schedule I Part 1, for contesting election in a Scheduled Tribe reserved constituency. The Khasi tribe had been notified as a tribe entitled to a reservation of seat. At the scrutiny the appellants' nomination paper was rejected on the ground that he was an Anglo-Indian within the meaning of the word as defined in Article 366(2) of the Constitution and was thus not a member of the Scheduled tribe and was not entitled to be nominated as a candidate for the reserved seat for the member of the tribe. The respondent No. 3 having been elected, his election was challenged on the ground that the appellant's nomination paper was wrongfully rejected. The Election Tribunal held that the appellant was not a member of the Khasi tribe and thus his nomination was rightly rejected.

In the appeal before the High Court the question before the Division Bench was whether the appellant was not a member of the scheduled tribe? Mehrotra, J. held that it was a question of fact depending upon the evidence produced in the case. Deka, J. concurred. The appellant's father, late James Alfred Reade, was an English man who married late Ka Mainshap Phanwar, a Khasi woman. The appellant had never seen his father and since his child-hood lived among the Khasis and excepting a daughter of his, who had married a Bengali and another who married an American, all his children were married to Khasis and that one of his sons married the daughter of Siem of Cherra and the appellant himself had married a Khasi woman. The Tribunal was held to have been wrong in holding that the appellant was an Anglo-Khasi. "Anglo-Khasi" was an expression which in common parlance, indicated a mixture of blood. There might be a marriage between a Khasi and an European and the children born of such marriage, might be called Anglo-Khasi; but that by itself was not enough to exclude them from the membership of the Khasi tribe. Whether they could be regarded as Khasi tribal, would be determined by the evidence produced in the case. The mistake into which the Election Tribunal had fallen was that he had assumed that when the Constitution and the Scheduled Tribes Order used the word "Khasi-tribe", it only meant a Khasi of pure blood. The conduct of the community which had been given a right of special representation, the manner and how the community regarded the particular individual and whether the community as a whole intended to take the individual within its fold were all matters which would be relevant for consideration of the question as to whether within the meaning of the Constitution, the appellant could or could not be regarded as a member of the Khasi, tribe. Their Lordships did not think that the purity of blood was the only criterion to judge whether a particular individual was a member of the Khasi community or not. If that was the only element which would have to be considered in determining whether the appellant was a member of the Khasi clan, it would be hardly possible to find a dozen people who. could be said to possess racial purity in that restricted sense.

Their Lordships relied on *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram*, which laid down

that in considering the question whether a person was a member of a particular community, the fact that he used to consider himself as a member of the community, he observed the customs of the community and his assertion in the earlier declaration were all material factors to be considered. Their Lordships, therefore, observed that it was not uncommon process for a class or tribe outside the pale of caste to enter the pale and if the other communities recognise their claim, they were treated as of that class or caste. The process of adoption into the Hindu hierarchy through caste was common both in the North and in the Southern India and that there had been cases where people who judged from purity of blood could not be Khasis were taken into their fold, and orthodoxy did not stand in the way of their assimilation into the Khasi community. Relying on the above decisions Mr. Lahiri submits that the fact that the Laskar community originated from a mixture of blood between the Tripura tribals and the Bengalis, would be of no consequence. It would depend on whether the members of Tripura, Tripuri, Tippera tribal community as a whole had taken the Laskar community as members within its fold.

Mr. Kundu, the learned Advocate General, Tripura, while not disputing the law points out that the Court treated the question to be one of fact to be determined on the basis of evidence and that in the instant case there is no evidence to show that Tripura, Tripuri, Tippera tribal community as a whole accepted the Laskar community into its fold. Further, according to him, the burden would be on the petitioner to show that they satisfied the tests. The purity of blood, it is submitted, would not be the only test but their conduct in following the customs and the way of life of the tribe, the way in which they were treated by the tribal community and the manner in which they were treated and the practice amongst the tribal people in the matter of dealing with the Laskar community would be material.

10. In *A. S. Khongphai v. Stanley D. D. Nichols Roy* (1965) ELR Gau 196, the first respondent who declared himself to be a member of the Khasi tribe having been elected, his election was challenged on the ground that his mother was American, although he was a Khasi. It was held that for determining the question whether a person belonged to the Khasi community or not for the purpose of special representation, it was not only the purity of blood which would be the criterion but all the surrounding circumstances would have to be looked into. From the evidence of that case it was clear that the first respondent represented the Khasi community whenever there was any case for representation of such community. He was recognised as a Khasi amongst the Khasi community. In two earlier election cases he had been held to be a Khasi by the Commissioner of Election Cases and by the Election Tribunal. The proceedings of the Khasi National Durbar dt. 26th and 30th March, 1925 showed that a person having a Khasi father could also acquire the citizenship of the Khasi State. All this evidence clearly established that the respondent was recognised as a Khasi.

11-12. Another decision in the same line is that of *N.E. Horo Vs. Smt. Jahanara*

Jaipal Singh, . In that case the respondent filed the nomination paper in 51 Khunti Parliamentary (Scheduled Tribe) Constituency in the State of Bihar as a Scheduled Tribe candidate. She was a widow of late Shri Jaipal Singh and was a member of the Munda Scheduled Tribe in the State of Bihar. She filed certificates showing her to be a "Munda". The Returning Officer rejected her nomination paper and the appellant Shri Horo was declared elected to the Lok Sabha. The Patna High Court in appeal held that the respondent's nomination paper had been illegally rejected by the Returning Officer and set aside the election of the appellant holding that the Returning Officer had not considered the custom by which if a Munda male marries a woman not belonging to Munda Tribe and that if accepted by the Tribe the wife acquires the membership thereof. It was held that once the marriage of a Munda male with a non-Munda female is approved or sanctioned by the "Parha Panchayat" they become members of the community. Even if a female is not a member of a tribe by virtue of birth she having been married to a tribal after due observance of all formalities and after obtaining the approval of the elders of the tribe would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile. Munda was one of tribes or tribal communities specified in the Scheduled Tribes Order. It was accordingly held that it would well be said, that the term "tribal community" had a wider connotation than the expression "tribes". A person who, according to the strict custom of a tribe, could not be regarded as a member of that tribe might well be regarded as a member of that tribal community. Where a non-Munda woman is married to a Munda male and the marriage is approved and sanctioned by the "Parha panchayat" of that tribe and the marriage is valid she may not, on the assumption that the rule of endogamy prevails, become a member of the Munda tribe in the strict sense as not having been born in the tribe. She cannot, however, be excluded from the larger group, namely, the tribal community. The view taken by the High Court that "the use of the term "tribal communities" in addition to the term "tribes" in Article 342 shows that a wide import and meaning should be given to these words and even if the respondent was not a member of the Munda tribe by virtue of birth she having been married to a Munda after due observance of all formalities and after obtaining the approval of the elders of the tribe would belong to the tribal community to which her husband belongs on analogy of the wife taking the husband's domicile", was approved.

13. In *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, Bhaiya Ram Munda, an unsuccessful candidate at the mid-term election held in January, 1969 applied to the High Court of Patna for setting aside the election of the first respondent, Anirudh Patar, on the plea that the first respondent was not a member of the Scheduled Tribe. The High Court dismissed the petition holding that the first respondent was a member of a Scheduled Tribe called "Munda" specified in Part III of the Constitution (Scheduled Tribes) Order, 1950. Bhaiya Ram having appealed, the Supreme Court held that the first question to be determined was whether Patars are not Mundas? It was held that whether a particular person was

a member of a Scheduled Tribe so described by the President under Article 342 of the Constitution was essentially a question of law. Though an admission made by him expressly or by implication that he was not a member of a Scheduled Tribe was evidence against him in an election petition, the evidence was not conclusive. It was true that in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 the name "Munda" was mentioned and similarly the names of other sub-tribes amongst Mundas were mentioned. Counsel for the appellant contended that if Mahalis, Ho, Bhumij, Asur, Baiga, and Khangars were Mundas, specific mention of some of those tribes in the Scheduled Tribes Order clearly indicates that Patars who were not mentioned therein were not a Scheduled Tribe within the meaning of the Order. The Supreme Court, however, held : "There is however no warrant for that view. If Patars are Mundas, because some sub-tribes of Mundas are enumerated in the Order and others are not, no inference will arise that those not enumerated are not Mundas. We are unable to hold that because Patars are not specifically mentioned in the List they cannot be included in the general heading Munda". Their Lordships referred to the decisions holding that the Courts cannot allow evidence to be taken for proving that certain classes of people though not expressly designated in the Presidential Order were intended to be covered by the Order, but observed that it was not the case of the first respondent that Patars were a distinct community but that they should be regarded as Mundas because of the similarity of customs, religious beliefs, forms of worship and other social obligations.

Their Lordships referred to *B. Basavalingappa Vs. D. Munichinnappa*, There the respondent Munichinnappa who was elected from a Scheduled Castes constituency claimed to belong to the Bhovi caste which was one of the Scheduled Castes mentioned in the Constitution (Scheduled Castes) Order, 1950. In the election petition it was claimed that he belonged to Voddar caste which was not mentioned in the Order and that on that account he was not entitled to stand for election from Scheduled Caste constituency. Evidence was led before the Election Tribunal that Bhovi was a sub-caste of the Voddar caste and as the respondent did not belong to Bhovi sub-caste he could not stand for election from the Constituency. The High Court in appeal held that although Voddar caste was not included in the Order, yet considering the facts and circumstances in existence at the time when the Order was passed in 1950, the Bhovi caste mentioned in the Order was the same as the Voddar caste. In appeal to the Supreme Court it was contended that the High Court was wrong in considering the evidence and then coming to the conclusion that the caste Bhovi mentioned in the Order was meant for the caste Voddar and that the Tribunal should have declined to allow evidence to be produced which would have the effect of modifying the Order issued by the President. The Supreme Court held that the evidence clearly showed that in 1950 when the Order was passed there was no caste in the then Mysore State which was known as Bhovi and the Order could not have intended to recognise a caste which did not exist. It was therefore necessary to find out which caste was meant by the use of the name Bhovi and

for that purpose evidence was rightly recorded by the Tribunal and acted upon by the High Court. The Supreme Court accordingly confirmed the view of the High Court and held : "The decision in this case lends no support to the contention that evidence is inadmissible for the purpose of showing what an entry in the Presidential Order was intended to mean".

The next case referred to is *Bhaiyalal Vs. Harikishan Singh and Others*, where the question was whether the successful candidate was a Dohar and not a Chamar. The Supreme Court observed that in specifying castes, races or tribes under Article 341 of the Constitution, the President had been expressly authorised to limit the notification to parts of or groups within the caste, race or tribe, and the President may welcome to the conclusion that not the whole caste, race or tribe, but parts of or groups within them should be specified. Similarly the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to the parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. On that view the Supreme Court upheld the decision of the High Court that the successful candidate who was a Dohar was not, in the Constituency from which the case arose a Chamar within the meaning of the Constitution (Scheduled Castes) Order, 1950.

The next case considered was *Laxman Siddappa Naik Vs. Kattimani Chaniappa Jamappanna and Others*, where an unsuccessful candidate for election to the Mysore Legislative Assembly for a seat reserved for a member of the Scheduled Tribes filed an election petition alleging that the other three candidates were Bedars a tribe not specified in Part VIII, Para 2 of the Constitution (Scheduled Tribes) Order, 1950. The successful candidate asserted that he was a Nayaka and the Nayakas were also called Bedars. The High Court held that there was no Nayaka in the area and the successful candidate was a Badar. The Supreme Court allowed the appeal and held that Nayakas were to be found not only in the Districts of Mysore but also in Maharashtra and Rajasthan. "This tribal community was therefore wide-spread" and it was not possible to say that there was no Nayaka in the District to which the appellant belonged. A bare assertion by the election petitioner that the appellant was a Bedar did not suffice to displace the acceptance of the nomination paper or the claim of the appellant that he was a Nayaka. The last case referred was that of *Dina v. Narayan Singh*, C.A. No. 1622 of 1967, decided on 21-5-1968 by the Supreme Court (reported in (1968) ELR 212). In that case Dina Narnavare was declared elected to the Maharashtra Legislative Assembly from the Armori Scheduled Tribes constituency. His election was set aside on the application filed by the first respondent on the ground that Dina was not eligible to stand as a candidate from a reserved constituency. Dina had declared in his nomination paper that he was a member of the Gond (Mana) caste and that the same was a Scheduled Tribe in Taluka Gadchiroli of District Chanda in the Maharashtra State and being a Gond though styled as Mana he was entitled to the privileges given by the Constitution (Scheduled Castes) Order, 1950. The Supreme Court on a consideration of the

evidence came to the conclusion that there was no sub-tribe of Maratha Manas among the Gonds. It was found that the customs, manners, forms of worship and dress of the members of the Maratha Mana community were all different from the customs, manners, form of worship and dress of the Gonds. In that view the Court held that Mana community amongst the Marathas could not be regarded as Gond and the appellant was not entitled to stand for election as Gond. That decision clearly decided that the name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Order issued by the President it may be shown that the name included in the Order is a general name applicable to sub-tribes.

14. Mr. D. P. Kundu, the learned Advocate General, Tripura submits for respondents 1, 2 and 3 that the so-called Deshi Tripura (Laskar) community was never included in the Scheduled Tribes Order of Parliamentary enactments and, as such, there was no question of excluding them from the list of Scheduled Tribes in Tripura. According to him, a historical study of the subject would show that in the past Tripura/Tripuri/Tippera never included the Laskar community. The Tripuras, according to him, are a Tibeto-Burman race, akin to the Shan, one of Tribes included by Friederich Muller and other German Ethnologists under the generic term "Lohitic" implying connection with upper Brahmaputra or Lohit river, while Laskars are Bengali Kayasthas. An anthropological study, according to him, would show that the . Tipperas are divided into four groups, viz. (i) Puran or original tipperas, (ii) Jamatias, (iii) Noatias or Nutan Tripuras, and (iv) Riyangs. The group "Rajbangsis" as mentioned in Dalton's book "Tribal History of Eastern India" (Descriptive Ethnology of Bengal) indicates the "Puran Tripura" to which the royal family of Tripura belongs. This has also been corroborated by Shri Kailash Chandra Singha in his "Rajmala" (Page 17, para 2) published in 1896 A. L. and W. W. Hunter's "A Statistical Account of Bengal" (page 482) published in 1876 A.D. In this respect reference has also been made to "Imperial Gazetteer of India", Vol. XIII, 1908 A.D., "Gazetteer of Bengal and North East India by P. C. Alien and three others, "North East Frontier of India" by Alexandar Mackenzie, 1884 A.D., "Chittagong Hill Tracts" by R.H. Sneyed Hutchinson, 1909 A.D. In none of the Presidential Orders or Parliamentary enactments the "Deshi Tripura" (Laskar) community has been shown as Scheduled Tribe or sub-tribe. In those orders, counsel submits, Tripura, Tripuri, Tippera, Jamatia, Noatia and Riangs have been mentioned separately. If there is any sub-tribe, the name of that sub-tribe has been mentioned specifically; and that there is no mention of the Laskar community, although the petitioner claims that his community is a sub-tribe of Tripura community or part and parcel thereof. He also refers to "Udaipur Bibaran" by Brajendra Chandra Dutta, 1340 T.E. (corresponding to 1930 A.D.) and Webster's "Eastern Bengal District Gazetteer", 1910 A.D. In "Rajmala" by Kailash Chandra Singha published in 1896 A.D. there were 10 sub-groups (sects/clan) among the Tripuris, viz. (i) tipra (Tripura), (ii) Bachhal, (iii) Daityasing, (iv) Kuwatia, (v) Siuk, (vi) Chhatratia, (vii) Calim. (viii) Apai Achha, (ix) Chhiltia, (x) Sena. There is no mention of the "Deshi Tripura". He also refers

to "Rajmala" by Kali Prasanna Sen published in 1927 A.D. according to which "Laskars" denote title given to those persons who had been entrusted with administration of far away or newly conquered provinces, sometimes "Laskar" was treated as post following the practice in the erstwhile Muslim administration. Sometimes the persons in charge of Police Stations were designated as "Laskars". Compared to the above, according to the learned Advocate General, Circular No. 9 does not have any support from the above studies. The fact that the "Deshi Tripuras" were to be recorded as "Kshatriyas" along with Puran Tripura, Noatias etc. etc. did not mean that they were to be treated as Tribes. The "Kshatriyas", according to him, were never treated as Tribes, it meaning the soldier castes generally. He also refers to "A Statistical Account of Bengal" by W. W. Hunter published in 1876 A.D., "Marriage and Rank in Bengali Culture" by Ronel Bliden published in 1976 A.D. There was, according to counsel, specific order of the erstwhile Tripura ruler of 1946 A.D. to include "Noatias" as Kshatriya Samaj in Tripura; but regarding the Laskar community there was no such order; and on that basis he submits that the Circular No. 9 was clearly wrong. He also refers to Act No. 4 of 1329 T.E. (1919 A.D.) concerning "Ghar Chukti Kar" (House Tax) for hill subjects in Tripura, published in Magh of 1329 T.E. (1919 A.D.). They included Kuki, Lushai, Reang, Chakma, Halam, Tripura, Mog, Khasis, Garo, Naga and other Jhumias living in the hills and they had been called hill subjects. There is no mention of the Deshi Tripura. Laskar community, according to him, are not accustomed to Jhum method of cultivation and hence they are not Jhumias. Memo No. 53 was published in Kartik, 1341 T.E. (1913 A.D.) in respect of reservation order for Khowai division wherein hill people included only Puran Tripura, Noatia, Jamatia, Reang, Halam and not the Deshi Tripura. The order of erstwhile ruler of Tripura issued in 1353 T.E. (1945 A.D.) under No. 325 dated 1st Aswin in respect of reservation of lands for Tribals did not include Deshi Tripura or Laskar community as one of the hill people though Puran Tripura, Noatia, Reang and Halam communities had been mentioned therein as hill people. In the subsequent Order de-reserving a portion of the reserved land issued in 1358 T.E. (1948 A.D.) also there is no mention of Deshi Tripura or Laskar and only Puran Tripura, Noatia, Jamatia, Reang and Halam are mentioned. Rules for reserved land issued by the Council of Ministers of Maharaja held on 27-1-1356 T.E. also did not mention "Laskar" community or Deshi Tripura as Tribals.

15. According to the learned Advocate General "Tripuri" and "Trippera" are synonyms of Tripura". In the works of different authoritative writers there is no mention of "Deshi Tripura" as a sub-tribe or sub-class or division of even as part and parcel of Tripura, Tripuri, Tippera tribe or tribal community. It can, therefore, reasonably be concluded, submits the learned Advocate General, that Deshi Tripura was/is not a sub-tribe, subclass, division or part and parcel of Tripura, Tripuri, Tippera tribe or tribal community. Circular Nos. 9 and 10, according to him, were for census purposes and were clearly wrong. According to him it appears from Udaipur Bibaran by Shir Brajendra Dutta that the Laskar

community at Chandrapur Mouja in Udaipur were Bangali Hindu subjects living there for a long time. This book was published from the State Press and at the State expense in 1340 T.E. (1930 A.D.). Therefore, it is even submitted that Deshi Tripura community is not the Laskar community and that Deshi Tripura community and Laskar are different from each other. Deshi Tripura is the derivative of admixture between Bangali community and Tripura, Tripuri, Tippera community (sic) cannot be termed as "Deshi Tripura". The derivatives of admixture Between Laskar community (Bengalees) and Tripura, Tripuri, Tippera community only can be said to be "Deshi Tripura". He further submits that the titles of the Laskar community are significantly Bangali titles; and that even if Laskar community belongs to Deshi Tripura community then also it is apparent that they were never accepted by tribal society because they were having Bengali titles which meant that the patriarchal society wherein they were born and brought up was/is the Bengali society and not in tribal society and there is nothing to show that they were accepted by the tribal society. On the other hand, Deshi, Tripura and Tripura, Tripuri, Tippera tribal community have their own culture, language, social customs, usages and system and they are quite different from each other. According to him in regard to customs, usages, culture, language, marriage, births, deaths, worships, dress, occupation etc. etc. they are not tribal but exclusively Bengalees. He also refers to Dr. Suniti Kumar Chatterjee's "Kirata Jana Kriti"(The Indo-Mongoloids) published by "The Asiatic Society" in 1974 wherein it is stated that the Tipperas in the State of Tripura have still kept up their own Bodo language; and in the Census Report of 1340 T.E. the Census Officer, Soumendra Deb Barma, has written that "Deshi Tripura" are Bengalees in respect of language, religion, social customs, usage, agriculture, industry, profession, education etc. etc. The learned Advocate General files a comparative table showing the distinctions between the Tripura and Deshi Tripura in respect of socio-economic life, domestication of animals, Rituals, Industries, social structure, marriage, dress, ornaments, succession, death rites, religion and festivals, housing, inter-course and social policy.

16. The learned Advocate General submits, that in view of the provisions of Article 342 and the definition given in Article 366(25) of the Constitution, it is not possible for any one except the Parliament to include or exclude any tribe or tribal community from the list of tribal communities given in the Constitution Scheduled Tribes order and, even if assuming but not admitting that the government tried to include the Laskar community in that list, such inclusion would be entirely invalid and the Government would not be estopped from taking the correct legal position. It has been held in AIR India Vs. Nergesh Meerza and Others, (para 76), that it is well settled that there can be no estoppel against a statute much less against constitutional provisions. The Notification issued by the President in 1951 and the Acts of 1956 and 1976 did not mention the Laskar community or Deshi Tripura as Scheduled Tribe for the State of Tripura and it is not open to any one to seek for any modification in the Presidential order subsequent to Parliamentary enactments by producing evidence to show that

though Tripura, Tripuri, Tippera were alone mentioned in the Presidential order as Scheduled Tribe, Deshi Tripura or Laskar Community was also a part of that Scheduled Tribe and as such to be deemed to be included in that Tribal community. Wherever a caste or Tribe has another name it has invariably been mentioned within brackets after it in the order. It would not, therefore, be open to lead evidence to establish that Laskar community, though not mentioned within brackets, is part of Tripura, Tripuri, Tippera Scheduled Tribe as notified in the Order. In order to determine whether or not a particular community is Scheduled Caste or Scheduled Tribe within the meaning of Article 341 or 342 of the Constitution one has to look at the order issued by the President. The plea that though the Laskar Community is not mentioned with Tripura, Tripuri and Tippera Scheduled Tribe yet they belong to Deshi Tripura which is a Sub-Tribe of Tripura, Tripuri, Tippera cannot legally be accepted. An enquiry of this kind it is submitted, would not be permissible having regard to the provisions contained in Article 342. The notification issued by the President under Article 342 is a result of an elaborate enquiry. This question is, the learned Advocate General submits, out and out a question of law and not even a mixed question of fact and law. Even assuming *arguendu* that even when a Sub-Tribe is not included in the Presidential Notifications, the said sub-tribe may also be treated as Scheduled Tribe for particular State or Union Territory as the case may be, it would be so provided the custom, usages and culture etc. etc. of that community, are similar to the customs, usages and culture of the Tribe or Tribal community of which such tribe claims to be part and parcel. From this angle also, it is submitted. Laskar Community do never belong to any Scheduled Tribe, though the Laskar Community had been enjoying facilities available to Scheduled Tribe for certain period on the basis of certain memoranda of government of Tripura, those were passed on wrong assumption and inference but not on any valid legal basis. The Laskar community's customs, usages, and culture are purely customs, usages and culture of the Bengali's and as such it cannot claim to be sub-tribe of Tripura, Tripuri or Tippera. An anthropological and historical study of the origin of the Laskar Community also goes to support this contention. This question is purely a question of law and it cannot be said that the enjoyment of certain benefits by the members of the Laskar Community as Scheduled Tribe is repugnant to the Presidential Orders and Parliamentary law. Because of the above factors when the mistake was detected by the Council of Ministers in its meeting on 31-1-1976, it took a decision to the effect that the Laskar Community did not ethnically, linguistically belong to any Scheduled Tribe and, therefore, they should not be issued certificates of Scheduled Tribes etc. The Council of Ministers in their meeting dt. 14-2-1976 and 11-8-1978 endorsed the views already taken in the meeting dt. 31-1-76 and asked the administration to issue instructions accordingly to take up the matter with the Union of India. In this connection the Government of India Ministry of Home Affairs letter No. BC. 12017/ 10/75-SCT/1, 20th Jan., 1976 addressed to the Chief Secretary to the Government of Tripura have been referred to.

17. Counsel further submits that in Census report of 1340 T.E. (1930 A.D.) at pages 67 and 68 it is observed that the Laskar Community socially belongs to a community distinct from Tripura. It was also pointed out in that report that in the social, customs, religious practices, language, both spoken and written, the Laskars are essentially Bengali and that while the Tribes in Tripura were accustomed to Jhuming method of cultivation, the Laskar did never resort to such method of cultivation as that of the tribes. The circular No. 9 of the then State of Tripura published in the Tripura State Gazette dated 30th Agrayana 1340 T.E. and Circular No. 10 published in the Tripura State Gazette on 15th Magh, 1350 T.E. were, it is submitted, circulated in respect of census operation and these circulars cannot confer on the Laskar community a right to be treated as Scheduled Tribe. In the Census report itself, it has been correctly observed that the Laskars are essentially Bengali in customs, usages and also in language and therefore they cannot get any help from the Circulars Nos. 9 and 10. The circulars in Annexures 6 and 7, it is submitted, were also wrong being based on wrong decisions. Annexures 3 to 7 to the writ petition cannot entitle them to the reliefs prayed for in the writ petition. It is true that after the Annexures 4, 5, 6 and 7 to the petition, Tribal Certificates were continued to be issued to the Laskar Community and the matter came to the notice of the Government of India in connection with the Tribal Certificate issued to one Shri Krishnananda Laskar, a candidate for I.A.S. examination. But that would not create any prescriptive right in favour of the Laskar Community. Pursuant to the decision of the Council of Ministers again on 11-8-78, it instructed that the Union Government should be informed that the community described as Laskar, Laskar Khatriya and Deshi Tripura were not covered by the Presidential Order specifying the communities as Scheduled Tribes. The members of the Laskar Community no doubt brought to the notice of the State Government by submitting representation after representation, but there was no scope for consideration. A decision having already been taken nothing could be done by the respondents. The letter issued by the Director, Welfare for Scheduled Tribes and Scheduled Castes dt. 22-9-1978 (Annexure 10) was usual communication of the decisions of the Government and that the letter was issued by the Authority competent to issue such letter. The D.O. letter or the memorandum could not be said to be arbitrary, illegal or unjust. The members of Laskar community never belonged to Scheduled Tribe and by the D.O. letter and memorandum only this fact was merely circulated for proper exercises of power reposed in the Executive of the State. It is submitted that the benefits of Scheduled Tribe were wrongly enjoyed and if any member of the community was elected from any Scheduled Tribes reserved constituency in Panchayat Election or in any other election, his election is liable to be set aside because his nomination paper was accepted on wrong conception and wrong certification. As the State Government was not authorised to include any community in the list of Scheduled Tribes, the action of the State in stopping issue of certificates could not be said to be arbitrary; on the other hand it is quite in conformity with the decisions of the Supreme Court and the provisions of Article 342, and, hence, there has been no infringement of the

provision Clause (4) of Article 16 and Parts IV and XV of the Constitution or any principle of natural justice.

18. In their affidavit-in-reply the petitioner pointed out that both written and spoken as well as official language in the State of Tripura has all along been Bengali from time immemorial. Social customs, religious practices, languages, both written and spoken of the inhabitant of Tripura including Maharaja's Thakur loks have all along been those of Bengalis" and the members of the Royal families of erstwhile Tripura and the members of the Thakur Lok families belong to Tripura, Tripuri, Tippera Scheduled Tribe in the State of Tripura; and that the name by which a tribe or sub-tribe is known is not decisive; and that though Deshi Tripura Laskar Community was not mentioned in the order of the President notified under Art, 342 they being part and parcel of Tripura, Tripuri and Tippera Scheduled Tribe are included among Scheduled Tribes in the General name of Tripura, Tripuri and Tippera. It is further asserted that Laskar community or Laskar means a body of Armed Indian Tribesmen (Force) and therefore the origin of Laskar community was tribe which emanated from the tribal" community of Tripura which has ultimately been termed as Deshi Tripura (Laskar Community).

19. After the writ petition was amended, in their additional affidavit-in-reply it is further stated that the members of the Tripura royal family, the Thakurs and persons like Cabinet Ministers, Government Employees and Officers and other persons who pursue various modern avocations of life and who are included in Tripura, Tripuri, Tippera and considered by the present Government of Tripura and all concerned as members of Scheduled Tribe even though they never pursued, or ceased to have pursued for a long time the primitive tribal way of life. It is reiterated that the adoption of different usages, culture, language and system of marriage etc. etc. by a section of a community cannot and do not exclude the said section from the said community. With the evolution and growth of the society, the mixture of culture and usages, tribal people living in the remotest corners of the State are coming out of primitive existence and adopting modern ways of life, but thereby they did not cease to be members of Scheduled Tribes. It is submitted that exclusion of the members of the Laskar community from the list of Scheduled Tribes can be done only by an act of Parliament and the State Government has no jurisdiction to exclude them.

20. In an additional affidavit by the respondents I and 2, it has been asserted that the Laskar Community and or Deshi Tripura were never recognised as Scheduled Tribe with respect to the Union Territory of Tripura/State of Tripura within the meaning of Article 342 of the Constitution and as such question of their de-recognition cannot and does not arise; and that after the 1964 judgment of the Supreme Court Deshi Tripura (Laskar community) was de-recognised as Scheduled Tribe and all concerned were informed of the de-recognition. As regards the validity of certificates issued by certain issuing authorities of Tripura to the members of the Laskar Community as Scheduled Tribe, by the letter dt. 28-4-79 containing the memorandum which stated that after careful examination

of the matter in consultation with the Law Department, it has been decided that the certificates issued by the various authorities of Tripura to the Laskar community as Scheduled Tribe are to be treated as infructuous (Annexure 13 to the petition), the learned Advocate General submits that there was no question of giving any reasonable opportunity before passing the impugned direction. The certificates are to be treated as infructuous. The memorandum, it is submitted, has not envisaged individual cases. When asked to make a statement by the Court the learned Advocate General categorically states on instruction that those certificates may be treated as infructuous prospectively and not retrospectively. In view of the above statement, those who have already enjoyed the benefits by virtue of such Scheduled Tribes Certificates, they would not be deprived of the benefits they have already enjoyed and this memorandum shall be effective from its date prospectively, in so far as the demand for future benefits are concerned. The order will not affect the certificates already issued.

21. Lastly, the learned Advocate General submits that even assuming, but not admitting that there is scope for examining whether the Laskar community belongs to Tripura, Tripuri, Tippera or not the question will be one of very complicated disputed facts which cannot be gone into by this Court in writ jurisdiction; and the petitioners have not placed any evidence before the court to decide the question and hence this petition is liable to be rejected.

22. The learned Advocate General, Tripura refers us to the decisions in AIR India Vs. Nergesh Meerza and Others, (Para 76); Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, ; Abhoy Pada Saha Vs. Sudhir Kumar Mondal, ; Dadaji alias Dina Vs. Sukhdeobabu and Others, ; R. Palanimuthu Vs. Returning Officer and Others, ; Laxman Siddappa Naik Vs. Kattimani Chaniappa Jamappanna and Others, ; B. Basavalingappa Vs. D. Munichinnappa, ; Bhaiyalal Vs. Harikishan Singh and Others, ; Parsram and Another Vs. Shivchand and Others, ; Kishorilal Hans Vs. Raja Ram Singh and Others, ; Bhaiya Ram Munda Vs. Anirudh Patar and Others, ; State of Kerala and Another Vs. N.M. Thomas and Others, ; Union of India (UOI) and Another Vs. K.S. Subramanian, The State of U.P. Vs. Ram Chandra Trivedi, ; and D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, in support of his contention and answering those of the petitioner. We shall deal with these cases appropriately.

23. Mr. S. Ali, the learned Standing Counsel for the Government of India on behalf of the respondents 6, 7 and 8 on the basis of their affidavit-in-opposition, submits that before the judgment of the Supreme Court in 1964 viz. B. Basavalingappa Vs. D. Munichinnappa, the Deshi Tripura (Laskar) community was treated as a part and parcel of the Tripura, Tripuri, Tippera community and as such they were getting benefits as Scheduled tribes in Tripura. After the judgment of the Supreme Court in 1964 these persons were de-recognised as Scheduled Tribes in the State of Tripura. Further, in view of the said judgment of the Supreme Court it was considered necessary that the synonyms of sub-caste/

tribe of various recognised Scheduled Tribes notified in the Presidential Order should be determined and the order modified to incorporate the genuine synonyms and sub-caste/tribe. This question was gone into by the Lokur Committee as well as by the Joint Committee on the Scheduled Caste and Scheduled Tribe Order (Amendment) Bill, 1967. Both these committees did not recognise Deshi Tripura as a synonym or sub-tribe of Tripura Tribe. Counsel submits that the case of any community claiming to be part of the community included in the Presidential Order is to be considered on actual facts. As there is no definite proof that Deshi Tripura as a whole is a sub-tribe of the Tripura Tribe, the claim of the persons belonging to Deshi Tripura cannot be accepted. The position is, therefore, to be verified in individual cases by the State Government/District Administration and if the person is found to be actually belonging to the Tripura tribe, as per the Presidential Order, a certificate can be issued in the name of the community given in the Presidential Order. Further, it is submitted that the amendment in the existing list of Scheduled Castes/Scheduled Tribes can be done only through an Act of Parliament in view of Arts. 341 (2) and 342(2) of the Constitution of India. The benefits hitherto enjoyed by the Deshi Tripura (Laskar) community had been withdrawn in view of the judgment of the Supreme Court in 1964 and unless they are included in the list of Scheduled Tribe in relation to the State of Tripura according to the procedure prescribed above, the certificate to Deshi Tripura (Laskar) community cannot be issued as this community does not find place in the Presidential Order.

It is further submitted that the proposal received from the President of the Deshi Tripura (Laskar) Upajati Kalyan Samity is being considered along with other such proposals, recommendations, suggestions and representations in consultation with the concerned State Governments, Union Territory Administrations and the Registrar General of India in the context of the proposed comprehensive revision of the list of Scheduled Castes and Scheduled Tribes. Comments from some of the State Governments are still awaited and they are being regularly reminded and that revision can be done through an Act of Parliament in view of Arts. 341(2) and 342(2) of the Constitution. It is also submitted that the impugned order of the Government of Tripura is not arbitrary because whatever they did it was at the instance of the Government of India. The certificates issued to the Deshi Tripura community do not have any validity as this community is not found in the list of Scheduled Tribes in Tripura and the benefits enjoyed as Scheduled Tribes by those belonging to the Deshi Tripura (Laskar community) cannot now get the benefits after 1964 in which year the Supreme Court gave the decision on the issue. The petition, according to him, fails.

24. To determine the validity or otherwise of the impugned decisions and Memorandums the crucial question to be decided is whether the Deshi Tripura (Laskar) community is included within the Tripura, Tripuri, Tippera Tribe as notified in the Constitution (Scheduled Tribes) Order? To decide this certain initial questions have to be decided, namely, whether the Government of Tripura treated the Laskar community as to have been so included in the past; whether

the Government of Tripura is estopped from treating the Laskar community as a non-tribal; whether evidence can be adduced to show that, though not specifically mentioned in the Constitution (Scheduled Tribe) Order, yet the Laskar community has always been included in Tripura, Tripuri, Tippera; and lastly, even if it is permissible under law to lead evidence, whether the petitioner adduced enough evidence to decide the question in this writ petition?

25. We have noticed how the entry stood in the Constitution (Scheduled Tribes) order at successive stages. During the period from 1951 to 1956 it was "Tripura". During 1956 to 1976 it was, Tripura, Tripuri and Tippera". After 1976 it is "Tripura, Tripuri, Tippera. There is no dispute in this regard. There is also no dispute that till the impugned Memorandums were issued, Tribal certificates had been issued to the members of the Laskar community under the impression that the Laskar community was included in Tripura"; Tripura, Tripuri and Tippera"; and Tripura, Tripuri, Tippera as notified in the Constitution (Scheduled Tribes) Order from time to time.

26. On the question of estoppel the learned Advocate General, Tripura submits that in view of the provisions of Article 342 of the Constitution it is not possible for any one either to include or to exclude a class or community. Even assuming but not admitting that the Government at one stage might thought to have included Deshi Tripura Laskar community in the list of Scheduled Tribes, there will be no estoppel against a statute. We find force in this contention. As has been held in AIR India Vs. Nergesh Meerza and Others, it is well settled that there can be no estoppel against a statute much less against Constitutional provisions. Even if in the Annexures there was some doubt expressed in favour of inclusion of Deshi Tripura community among the Scheduled Tribes as notified, no specific notification has been produced to that effect. Again it is not for the State Government or their officers by their affidavits to say so. The question must be decided on the basis of the Constitution (Scheduled Tribes) Order. The Government cannot speak for the Parliament. No one may speak for the Parliament and the Parliament is never before the Court. As was observed in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, after "Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the Court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No act of Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament". Validity of the impugned Memorandums

and decisions cannot in the instant case be judged merely by affidavits filed on behalf of the State, but by the tenor and interpretation of the Scheduled Tribes Order and the facts and circumstances relevant for proper interpretation of the entries in the Order.

27. In the Constitution (Scheduled Tribes) Order we do not find "Deshi Tripura (Laskar) community" as a community. Therefore, the petitioner's claim to have been included as a community within Tripura, Tripuri, Tippera would be unacceptable. The question of a particular individual claiming to belong to Tripura, Tripuri, Tippera is entirely a different matter. This would be the position deduced from several decisions of the Supreme Court on interpretation of the Constitution (Scheduled Castes) and (Scheduled Tribes) Orders.

In *Abhoy Pada Saha Vs. Sudhir Kumar Mondal*, Abhoy Pada described himself in the nomination paper as "member of the Sunri Caste which is a Scheduled Caste". Sudhir objected to this nomination contending that Abhoy did not belong to any Scheduled Caste. The Returning Officer overruled the objection. Abhoy having been elected, Sudhir filed an election petition on the ground that Abhoy was a member of the Saha caste and not a member of the Scheduled Caste. The Election Tribunal rejected this contention and dismissed the petition. The Calcutta High Court reversed the decision and declared election of Abhoy invalid and stayed it on the ground that he did not belong to the Scheduled Caste. While allowing the appeal and setting aside the judgment of the High Court and restoring that of the Election Tribunal the Supreme Court has observed that Article 341 gives power to the President to specify by public notification the castes or parts of or groups within castes which shall for the purpose of the Constitution be deemed to be Scheduled Castes. The President, on August 10, 1950, passed the Constitution (Scheduled Castes) Order, 1950 under Article 341 setting out in its schedule the various castes which were declared Scheduled Castes. This Order was amended from time to time by statutes passed by Parliament and at the relevant time Item No. 40 of part 13 of the Schedule to the Order which set out which were Scheduled Castes in West Bengal stood as follows : "Sunri excluding Saha". Item 40 and some other terms of the schedule were made applicable to the State of West Bengal except the Purulia District and the territories transferred from Purnea District of Bihar.

The question was whether the appellant was a member of the Scheduled Caste specified in this item. In the election petition the respondent had stated that the appellant was a member of the Saha caste and not a member of the Scheduled Caste. The question was whether the appellant satisfied the description "Sunri excluding Saha" in item 40 of the President's order. To decide that point the description has first to be properly interpreted and understood. That Sunri is a caste nobody disputes that. There was also no dispute that the Constitution (Scheduled Castes) Order, 1950 was promulgated to indicate those cases who are to be considered as Scheduled Castes for the purpose of the Constitution. "Sunri" item 40, therefore, refers to a caste. If Sunri is a caste, the word "Saha"

in the expression "excluding Saha" in the item must, without more also refer to a caste group within the Sunri caste. It is legitimate to think that when a statute says that a thing is to be excluded from another, both things are of the same kind; if one is a caste, the other must be a caste. It follows that when the item excluded Sahas from Sunris, since Sunri is a caste group, Saha must equally be another caste group. Now a thing can be excluded from another only if it was otherwise within it. Therefore, the correct interpretation of the item is that it indicates men of the Sunri caste but not those within that caste who formed the smaller caste group of Sahas. Their Lordships did not accept the interpretation that the Sahas excluded were those Sunris who bore the surname Saha. "If the intention was to exclude from Sunris those members of that caste who bore the surname Saha, the item would have said so; it would then have read "Sunri excluding those who bore the surname Saha"." In the absence of such words "Saha" must, in the context, be understood as referring to a smaller caste group within the bigger caste. Surname is irrelevant as a test for applying item 40 unless it is shown that it indicated a smaller caste group of Sunris. The appellant in that case was Sunri by caste and it had not been proved in that case that the appellant belonged to the smaller caste group of Sahas and as such he must be held belonging to the Scheduled Caste specified in item 40. In the instant case the Deshi Tripura (Laskar) community has not expressly been excluded as a sub-tribe or tribal community. If the Laskar community claims to be a tribal community distinct from Tripura, Tripuri, Tippera, it must be taken to have been excluded from the list of Scheduled Tribes for Tripura.

28. In *Dadaji alias Dina Vs. Sukhdeobabu and Others*, the appellant Dadaji was elected to the Maharashtra Legislative Assembly from the Armori Constituency (No. 151), a Scheduled Tribe reserved constituency, at the general election held in 1978. He declared that he belonged to "Mana" community. The appellant's election was challenged on the ground, inter alia, that he did not belong to any of the Scheduled Tribes specified in Part IX of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 as it stood at the time of the election and was not, therefore, qualified to be chosen to fill the seat which was reserved for Scheduled Tribes. It was alleged that the appellant belonged to "Kshetriya Bidwaik Mana" community and not to the "Mana" community referred to in Entry No. 18 of Part IX of the Schedule to the order. The Supreme Court observed that the expression "Scheduled Tribes" as has been defined in Clause (25) of Article 366 of the Constitution as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution. Article 342(1) of the Constitution provides that 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 the Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. It was in pursuance of this constitutional provision

that the President issued the Order specifying the tribes or tribal communities which should be deemed to be Scheduled Tribes in relation to the several parts of India. Article 342(2) of the Constitution confers the power on the Parliament to modify by law the order issued under Article 342(1) by including in or excluding from the list of Scheduled Tribes specified therein any tribe or tribal community. Apart from Article 366(25) of the Constitution there is no other definition of the expression Scheduled Tribes. Scheduled Tribes Are, therefore, only those which are named under Article 342 of the Constitution.

The Supreme Court also observed that a reading of the Schedule to the Order also shows that where there are two communities with the same name, one having affinity with a tribe and the other not having anything to do with such tribe and both are treated as Scheduled Tribes the community which has affinity with another tribe is shown along with it in the same group against a single entry and the other is shown against a different entry. This is illustrated by the inclusion of the "Koya" community having affinity with "Gonda" in Entry No. 33 of Part IX of the Schedule to the Order. If the Parliament intended, to treat the appellant's community also as a Scheduled Tribe, it would have shown "Mana" community under a separate entry. No such entry was found in the Schedule. It was also held that it is well known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious. In the instant case the "Deshi Tripura (Laskar) community does not find mention in the Constitution (Scheduled Tribes) Order for Tripura. The submission that Tripura, Tripuri, Tippera are synonyms has not been controverted by the petitioners.

29. In August, 1967 a Bill was introduced in the Lok Sabha proposing to amend the Schedule to the Order in respect of Maharashtra. By that Bill it was proposed to substitute the Schedule to the Order as it stood then by a new Schedule. Part VIII of the new Schedule related to Maharashtra. In so far as the amendments proposed to the Schedule to the order were concerned, the Joint Committee, inter alia, observed at Para 20(ii) thus : "The Committee feel that the proposal to specify the tribes, the synonyms and the sub-tribes in three separate columns will not be appropriate. As in the case of Schedule Castes Orders, the Committee are of the view that it would be best to follow the wording of Article 342(1) of the Constitution and specify The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities" ". Tripura, Tripuri,, Tippera are such synonyms.

30. In R. Palanimuthu Vs. Returning Officer and Others, where the election of the second respondent was challenged on the ground that he did not belong to the "Konda Reddy" Scheduled Tribe community as claimed by him but was a "Hindu Reddiar" and was therefore not qualified to be chosen to contest from the reserved constituency and consequently his election was void. On consideration of the oral and documentary evidence adduced before the learned Single Judge trying the election petition and also the evidence of three other persons examined, the learned Judge held that the second respondent belonged to the

Konda Reddy Scheduled Tribe community and upheld the second respondent's election and dismissed the election petition. However, the documents and oral evidence showed that the second respondent and his father, Venkata Reddy and grandfather Perumal Reddy belonged to the "Hindu Reddiar" community. On the basis of the available evidence on record the Supreme Court held that it was absolutely impossible for any court to reasonably conclude that the second respondent belonged to the Konda Reddy Scheduled Tribe community and not to the Hindu Reddiar community and accordingly it had been held that the second respondent did not belong to the Konda Reddy Scheduled Tribe community but belonged to the Hindu Reddiar community which was not a Scheduled Tribe community and that his election from the Scheduled Tribes reserved constituency was void. At para 16 of the report Varadarajan, J. stated :

"Before I part with this appeal, I would like to say what we feel that the Government of Tamil Nadu should notice for taking such remedial action as it may deem necessary. Scholarships are awarded, hostel accommodation and facilities are made available and reservation of seats in professional and other colleges and institutions of higher learning and for appointment to posts in government and quasi-government service have been made in Tamil Nadu for the backward classes forming one group and Scheduled Castes and Scheduled Tribes forming another group on the ratio of their population with the laudable object of helping their educational, economic and social advancement. The second respondent who has now been found to be a Hindu Reddiar and not a Scheduled Tribe Konda Reddy, had admittedly obtained the Tahsildar's certificate dated 26-10-77 to the effect that he belongs to the Scheduled Tribe Konda Reddy community admittedly with the object of securing a job as a Scheduled Tribe candidate. If he had succeeded in getting any job in government service or quasi-government service on the basis of that certificate it is needless to say that he would have deprived some real Scheduled Caste or Scheduled Tribe candidate getting the job on the basis of the aforesaid reservation. The second respondent has used that certificate for obtaining nomination and election in a Scheduled Tribes constituency of the Tamil Nadu Legislative Assembly even though he ought to have known that other candidates in the keenly contested election might raise objection to his false or wrong claim that he is a Scheduled Tribe candidate. The wrong claim which escaped the scrutiny of even the High Court had to be negatived only by this Court after appellant had taken a lot of pains and incurred considerable expenditure in filing the present appeal. This amount of scrutiny and contest could not be expected from students and candidates for appointments who belong to Backward Classes, Scheduled Castes and Scheduled Tribes."

31. In *B. Basavalingappa Vs. D. Munichinnappa*, (supra) their Lordships repeated that the evidence in that case was referred to only because there was undoubtedly no caste known as Bhovi in Mysore State as it was before 1956 and it had to be found out therefore which caste was meant by Bhovi. It would not have been open to any party to give evidence to the effect that, for example,

though caste A mentioned in the Order included or was the same as caste B whether caste A did exist in the area to which the order applied. In the instant case, Tripura, Tripuri, Tippera tribe very much exists in the State of Tripura and by now it is clear that Tripuri and Tippera are synonyms of Tripura. It would not, therefore, be open to any party to give evidence to the effect that Tripura tribe mentioned in the Order includes or is the same as Deshi Tripura (Laskar) community in the State of Tripura.

In *Bhaiyalal Vs. Harikishan Singh and Others*, (supra) this principle was reiterated holding that the caste of a candidate is a question of fact and when on this question both the Election Tribunal and the High Court have made concurrent findings, the Supreme Court would not usually interfere. Their Lordships further held that it is clear from Article 341(1) that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The same principle will apply to Scheduled Tribes and accordingly to determine whether or not Deshi Tripura is a Scheduled Tribe within the meaning of Article 342 one has to look at the public notification issued by the President in that behalf. In that case it was held that the plea that though the petitioner was not a Chamar as such, he could claim the same status by reason of the fact that he belonged to the Dohar caste which was a sub-caste of Chamar caste, could not be accepted and that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341 and the same argument would apply to the instant case, namely, the plea that though one is not a Tripura as such he can claim the same status by reason of the fact that he belonged to the Deshi Tripura Tribe, cannot be accepted. An enquiry of this kind would not be permissible having regard to the provisions contained in Article 342 of the Constitution of India.

In *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, (supra) it was reiterated that whether a particular person is a member of a Scheduled Tribe so declared by the President under Article 342 of the Constitution was essentially a question of law; but from the non-mention of Patars as sub-tribe of Mundas in the Schedule inference could not be drawn that they were not Mundas Patars having been a sub-tribe of Munda. If Patars are Mundas, because some sub-tribe of Mundas are enumerated in the Order and others are not, no inference would arise that those not enumerated are not Mundas and that it could not be said that because Patars were not specifically mentioned in the List they could not be included in the general heading Munda; and that the name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Order, it may be shown that the name included in the order is a general name applicable to sub-tribes. The learned Advocate General, Tripura submits that *Bhaiya Ram* is a digression from what was laid down in *Basavalingappa* (supra) and *Bhaiya Lal* (supra). In our view it is not really so. *Bhaiya Ram* deals with a sub-tribe of a tribe which does not find mention in the order while some other sub-tribes are mentioned. The decision is where one tries

to show his sub-tribe to have been included in the tribe mentioned, the fact that some other sub-tribes were mentioned but not his sub-tribe, would not debar him from showing that his sub-tribe was also included in the tribe mentioned. Applying this principle it has to be held that where one tries to show that his sub-tribe is included in the tribe mentioned in the Presidential Order, where no sub-tribe of the tribe mentioned in the order has been mentioned therein. In Basavalingappa (supra) the question was one of identification of the case mentioned in the Scheduled Caste Order in the Society. It was to ascertain what the entry Bhovi caste meant. In Bhaiya Ram the problem was the identification of the whole tribe in the Society. In Bhaiya Lal the plea that though he was not a Chamar, he could claim the same status by reason of the fact that he belonged to the Dohar caste which was a sub-caste of the Chamar caste, was not accepted and enquiry of that kind was disallowed. In Parsram and Another Vs. Shivchand and Others, Basavalingappa and Bhaiya Lal were followed.

In the instant case the problem is not as complicated as that. Here the problem is whether the Deshi Tripura (Laskar) community was or was not a part and parcel of Tripura tribe. If Deshi Tripura (Laskar) community claims to be a tribal community by its own right, no evidence will be permissible to prove that it is by its own right a Scheduled Tribe. If the Laskars claim to belong to the Tripura tribe it may be permissible to lead evidence as was the case in Bhaya Ram (supra). The Deshi Tripura (Laskar) community in this petition does not claim to be a sub-tribe of the Tripura tribe but only claims to have been included in it being a mixture of the Tripura tribals and Bengalis. If the Deshi Tripura (Laskar) community claims to be a Scheduled Tribe, being a separate tribal community, no evidence will be allowed to be led to prove that claim. If the Deshi Tripura (Laskar) community claims to be a sub-tribe of the Tripura tribe and takes the plea that though not specifically mentioned in the Order as a sub-tribe of Tripura, it was included within the Tripura tribe, evidence may be permissible following Bhaiya Ram Munda Vs. Anirudh Patar and Others, But Kishorilal Hans Vs. Raja Ram Singh and Others, would restrict its scope. This, of course, must be distinguished from the case of an individual claiming to have belonged to the Tripura tribe irrespective of whether he belongs to the Deshi Tripura (Laskar) community or not. Evidence to prove such a plea would be permissible for individuals and would not come within the mischief of Basavalingappa, Bhaiya Lal, and Kishorilal (supra). In Kishorilal (supra) Basavalingappa and Bhayalal were followed but no reference was made to Bhaya Ram and following the two decisions it was held that the returned candidate in that case was not entitled to establish that Jatav caste was the same as Chamar.

In the State of Kerala and Another Vs. N.M. Thomas and Others, Krishna Iyer, J. succinctly observed that Scheduled Castes and Scheduled Tribes are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President; and to confuse this backward most social composition with castes is to commit a constitutional error, misled by

a compendious application. Applying this it may be said that the Scheduled Tribes in Tripura is a mixed bag of tribes, races, groups, communities and non-tribes outside the fourfold Hindu division recognised as a general backward composition deserving protection. It may also be observed that the composition of backward castes is on a slightly different basis than the composition of backward tribes. While in the former social conditions constituted the predominant criterion, in the latter, the ethnic element predominates. The criterion to determine the sub-caste of a Scheduled Caste may for that reason be slightly different from that of determining the sub-tribe of a Scheduled Tribe.

32. The Laskar community has claimed that it is included in the Tripura tribe. For deciding that question it would be necessary to identify the whole Tripura tribe. Whether Laskar community is included in the Tripura tribe will be a question of fact and not a question of law. The rulings in *Bhaiya Ram AIR 1971 SC 2553*) (supra) may make such an inquiry permissible but the rulings in *Kishorilal Hans Vs. Raja Ram Singh and Others*, (supra) may restrict the scope of such an analysis on the basis of the affinity. The views of the Lokur Committee and the Joint Committee shall have to be borne in mind in this regard. It is now settled that whether a particular tribe or a sub-tribe or a tribal community belongs to the Scheduled Tribe or not is a question of law. Whether a particular individual belongs to a particular Tribe or sub-tribe or not is a question of fact to be determined on the basis of evidence adduced. Once it is decided that a particular individual belongs to a particular Tribe or a group of tribe or a tribal community, the next question as to whether he belongs to a Scheduled Tribe or not is again a question of law. The decisions in *Wilson Read AIR 1958 Gau 128*) (supra) : *Stanely D. D. Nichols Roy 1965 (27) ELR 196*) (supra); and *N.E. Horo Vs. Smt. Jahanara Jaipal Singh*, will be applicable for determination of the question whether an individual belongs to a particular tribe or sub-tribe. The purity of blood may not be the only test but one's conduct in following the customs and the way of life of the tribe, the way in which one was treated by the tribal community and the practice amongst the particular tribal people in the matter of dealing with such people would be material. Whether a particular individual was recognised as a member of the community by the tribal community itself would also be material. Historical materials may be relevant, but it must be observed that the concept of Scheduled Tribe as specified in the Presidential Scheduled Tribes Order is a Constitutional concept and has to be interpreted as such. Historical materials alone will not, therefore, be decisive. Approved public and general histories are admissible as in the nature of public documents or reputation, to prove ancient facts of a public or general, though not those of a private, particular or local nature. The Court may also take judicial notice of public facts, past or present, affecting the Government and Constitution of the country, and may refer to accredited histories to satisfy itself of their existence and to all matters u/s 57 of the Evidence Act. Considered in light of these principles, the authorities that have been cited in this case can be relied by Court as accredited histories. The oldest amongst them is *W. W. Hunter's A Statistical*

Account of Bengal, Vol. VI, which was principally compiled by H. M. Kisch, Assistant to the Director General of Statistics, and was published in 1876 by Trubner & Co., London. This volume dealt with five districts -- Chittagong Hill Tracts, Chittagong, Noakhali, Tipperah and Hill Tipperah. Thus Tipperah and Hill Tipperah were dealt with separately. Tipperah district was bounded on the north by the Bengal District of Maimansinh and the Assam District of Sylhet; on the south by the District of Noakhali; on the west by the river Meghna, which separated it from the Districts of Maimensinh, Dacca and Bikarganj; and on the east by the State of Hill Tipperah. The State of Hill Tipperah was bounded on the Assam District of Sylhet; on the south by the Districts of Noakhali and Chittagong; on the east by the Lushai country and the Chittagong Hill Tracts; and on the west by the Districts of Tipperah and Noakhali. At page 482 we find the following description of Tipperahs ;

"The Tipperahs are divided into four classes, viz : --

(1) the pure Tipperahs, the class to which the reigning family belongs; (2) the Jamaityas; (3) the Nowattias; and (4) the Riangs. With the exception of the Jamaityas, each of these classes is subdivided into several castes, differing slightly from each other, chiefly with reference to the duties they are called on to perform according to immemorial custom. The Tipperahs are all of the same religion, and speak the same language, differing only in minor local peculiarities. They worship the elements, such as the god of water, the god of fire, the god of forests, the god of earth, etc. Sacrifices form an important part of their religion; buffaloes, pigs, goats, and fowls being the animals ordinarily used for the purpose. At the present day, they are showing some symptoms of a tendency to conform in many respects to the religious observances of the Hindus, especially with regard to caste".

At page 488 we read :

"The Tipperahs have for a long period been brought into contact with Bengalis, and they are gradually becoming assimilated to them, especially by the adoption of a modified caste system".

Mr. Lahiri referred to page 358 of this book as to how the people called themselves. Mr. Kundu has also referred to its p. 482.

33. In "The North-East Frontier of India" by A. Mackenzis, Part III, Chapter XX, we read : "Sprung from the lunar race of Indian princes, Kirat (the hunter), exiled by his father yajati, founded the city of Tribeg, on the banks of the Brahmaputra.....". The Gazetteer of Bengal and North-East India was published about the year 1889 AD. Regarding the history it said : "The origin of the name Tripura is uncertain, A mythical account of the ancient history of the State is contained in the Raj mala, or Chronicles of the Kings, which was commenced in the fifteenth century; it was written in Bengali verse by Brahman pandits attached to the Court". As regards castes and occupations we read : "In Hill Tippera they number 76,000, and are divided into Puran or original Tipperas, and

Jamatias, the fighting caste. There are two other divisions which are not regarded as true Tipperas : the Nawatias, who are said to have come from Chittagong; and the Riyangs, who are of Kuki origin".

34. In Vol. XIII of The Imperial Gazetteer of India" published in 1908 it is said "The Raja claims descent from Druhyu, son of Yayati, of the lunar race. The present District of Tippera was not annexed to the Mugal empire until 1733. The Hill Tippera proper was never assessed to revenue and remained outside the sphere of Muhammadan Administration. Of the population 44 per cent spoken Tippera or Mrung, a dialect of the Bodo family, of which Kachari and Garo were the other most representatives, and 40 per cent, Bengali; many of the remainder spoke languages of the Kuki-Chih group, such as Manipuri and Hallam. Hindus form 69 per cent of the inhabitants, Musalmans 26 per cent, Buddhists 3 per cent, and Animists less than 2 per cent". We further read: "The Tipperas are a Mongolian race, and appear to be identical with the Murungs of Arakan. Outside the State and Tippera District they are found in large numbers only in the Chittagong Hill Tracts. In Hill Tippera they number 76,000, and are divided into Puran or original Tipperas, and Jamatias, the fighting caste. There are two other divisions which are not regarded as true Tipperas; the Nawatias, who are said to have come from Chittagong; and the Riyangs, who are of Kuki origin and were formerly the palki-bearers of the Tippera Rajas". Mr. Kundu has relied on this description.

35. Chittagong Hill Tracts by R.H. Sneyd Hutchinson was first published in 1909. In the chapter dealing with The Tribes", it is said that this tribe (Tippera) was divided into two classes, the "Purana or Tippera proper" and the "Jamatiyas". The following sub-castes were in the District: Hapang-Jamatiya or Achlong-Phadong, Naitong, Husoi, Naotiya, Hakler, Kewar, Tombai, Daindak, Garbing and Rieng.

36. Kirata-Jana-Kriti -- The Indo-Mongoloids: Their contribution to the History and culture of India, by Suniti Kumar Chatterji, was first published in 1951. According to him Tripura State is now the only area where the Bodo people still retain a good deal of their medieval political and cultural milieu, although Hinduism has made rapid strides among them. But nearly 303,030 people in the State have still kept up their old Bodo language, the Tipra or Mrung. The Tripura (this is how the tribal name has been Sanskritised) ruling house is, according to tradition, of North Indian Kshatriya origin, claiming Kinship with the Pandavas as scions of the lunar race; and very early immigration of Aryan-speakers from Upper India among the Tipra section of the Bodos -- the Southern Bodos -- is quite in the nature of things". The first version of the Raja-mala was in 1458. According to him, some traditions of the origin of the Tripura house, which were of Bodo origin unquestionably, are preserved in the most valuable Assamese Tripura Buranji, written by Ratna Kandali and Arjun Das in 1646 Saka = 1724 A.D., who visited Tripura thrice during 1710 -- 1714 as emissaries from King Rudra Sinha of Assam.

37. All the above authoritative books dealt with the description, language,

custom and culture of Tripura, Tripuri, Tippera but we do not find any description of the Deshi Tripura (Laskar) community in these books. In the Census Bibarani at page 67 we find the description of the Deshi Tripura where it is said that by mixture of Hindu Bengali and Tripura the Deshi Tripura has been created and that the Deshi Tripura are different from the other Tripura. Thus we find the detail description of their social customs, religion, agriculture, trade occupation etc. Udaipur was the capital of the ancient Tripura Kingdom. Udaipur Bibarani was written in 1340. At page 42 we find that Laskars of Chandrapur Mouza were the old indigenous people of that area. Some of them were Kshatriyas and were living side by side from generation. Among the Hill tribes he mentioned Jamatia, Riang, Owatta, Puran Tripura, Murum, Kalai, Kaipang, Bom, Bethu, Upani, Kuki, Chakma, Mog, Murasing and Totaran etc; but does not mention Deshi Tripura. At page 54 sub-tribes of Tripura have been stated but we do not find Deshi Tripura. However, the concept of a Scheduled tribe being constitutional and not historical it will not depend on history alone. The relevant post-constitutional factors have also to be taken into consideration.

38. To sum up, there is no dispute that the Deshi Tripura (Laskar) community as such has never been included in the Presidential (Scheduled Tribes) Order at any stage. The question as to who is a Scheduled tribe has to be decided on the basis of the Presidential Order only. It is not permissible for the State Government either to add or to exclude any tribe or tribal community from the Order. If the State Government sought to do so that would be ab initio un-constitutional. So would be any attempt to de-schedule or de-recognise any such tribe, tribal community or group of tribe or tribal community. It would, however, be open to interpret an entry in the Presidential (Scheduled Tribes) Order and to identify the tribe or tribal community in the State. There is evidence to show that until the impugned cabinet decisions were taken and the impugned memorandum dated 22-9-1978 was issued, the members of the Deshi Tripura (Laskar) community were treated as to have been included within the Tripura tribe and Scheduled tribes certificates issued and other benefits conferred on them; but that would not estop the Government of Tripura from taking the correct constitutional stand if the Laskar community did not belong to Scheduled Tribes, inasmuch as, there could be no estoppel against a statute much less against Constitutional provisions.

39. All the cases relied upon by the parties were election cases under the Representation of the People Act, 1951 and there was enough scope for adducing evidence as to what was the individual's position in the Scheduled caste or tribe, how he was accepted by the Scheduled caste or tribe of which he claimed to be a member, and what were the customs and practices followed by the individual and by the Scheduled caste or tribe of which he claimed to be a member. It was on the basis of the evidence so adduced that the Court could decide whether the individual did or did not belong to such Scheduled caste or tribe; but no such evidence has been adduced in the instant writ petition. Such detailed evidence could better be adduced in a civil suit but would not normally be allowed in a writ

petition. The petitioner has not adduced any evidence as to the origin, affinity, growth, and present condition of the Laskar community. There is no evidence about the social customs and religious practices of the community. The histories, the Rajmala and the Census Biharani themselves, in the absence of any such evidence, are not enough for arriving at any definite conclusion about their nature and existence.

We are also of the view that no evidence can be led to show that the Deshi Tripura (Laskar) community, as a community, is a Scheduled tribe being part and parcel of the Tripura, Tripuri, Tippera tribe. It would, however, be open for any individual, irrespective of whether he belongs to the Laskar community or not, to adduce evidence to show that he belongs to the Tripura, Tripuri, Tippera tribe. It may be open for the members of the Laskar community, not as a community, to adduce evidence to show that they belong to the Tripura, Tripuri, Tippera tribe though commonly known as Laskar community. But the evidence will not be acceptable to show that the Deshi Tripura (Laskar) community is the same as Tripura, Tripuri, Tippera tribe. We are also of the view that Tripuri" and "Tippera" are synonyms of Tripura and are not sub-tribes or subgroups thereof. For justifying an individual's claim to have belonged to the Tripura tribe the decision in Wilson Reade (supra) may be helpful. The "Anglo-Khasi" in common parlance indicated a mixture of blood but that itself was held, not enough to exclude them from their membership of the Khasi tribe, Similarly the Deshi Tripura (Laskar) community may indicate mixture of blood but that by itself may not be enough to exclude its members from the Tripura tribe. The adoption of some Hindu customs may not also be enough to exclude them as throughout India the process of adoption into Hindu hierarchy is common and the Rajamala and the Census Biharani indicate such a process having taken place among the Scheduled tribes of Tripura. It will depend on the extent of adoption into the Hindu fold on the one hand and abandonment of the tribal heritage, customs and practices on the other. Purity of blood would not be the sole criterion but all the surrounding circumstances shall have to be looked into.

As was held in N.E. Horo Vs. Smt. Jahanara Jaipal Singh, (supra) the term "tribal community" has a wider connotation than the expression "tribe". The original Laskars, though not born in the tribe, they could be accepted by the tribe as its members, or in other words they may have belonged to the tribal community. Their position may be like Tatars" among the "Munda" tribe as in Bhaiya Ram Munda Vs. Anirudh Patar and Others, or like "Mana" in relation to "Gond" as in Dina's case 1968 (38) ELR 212) (supra). The histories contain description of religion, customs and usages of the Tripuras and other tribes. The Census Biharani, the Rajmala and some recent histories contain particulars about customs and practices of the Deshi Tripura but even those may have changed in the process of assimilation. Mr. Kundu appears to be correct in his submission that in the works of different authoritative writers there is no mention of Deshi Tripura as a sub-tribe or sub-class or division or even a part and parcel of the Tripura tribe. It should, however, be noted that the Constitutional concept of

Scheduled tribe was not in the mind of the authors at the time when those were written. The books, therefore, have to be supplemented by evidence adduced in Court for the purpose of interpreting an entry or identifying a tribe included among the Scheduled Tribes in the society. In the absence of any such evidence it is not possible to hold that the Deshi Tripura (Laskar) community is included in or is a part and parcel of the Tripura, Tripuri, Tippera tribe, which is a Scheduled Tribe in Tripura.

40. In the result, this petition has to be dismissed and it is accordingly dismissed, but without costs. The stay order stands vacated.

41. We keep on record the statement made by the learned Advocate-General, Tripura, an instruction that as a result of the impugned Memorandum No. 18887-19077/TW/6-(L-D) dt. 28-4-79 the certificates already issued would be treated as infructuous prospectively and not retrospectively and those who have already enjoyed the benefits by virtue of such Scheduled Tribe certificates they shall not be deprived of the benefits they have already enjoyed and the Memorandum shall be effective from its date prospectively, in so far as the future benefits are concerned.

S. Haque, J.

42. I agree.