

(2010) 10 BOM CK 0219

In the Bombay High Court

Case No : Writ Petition No. 4335 of 2007 and Civil Application No. 1029 of 2008
in Writ Petition No. 4335 of 2007

Vishwanath Pandurang Mahadeshwar, Sai Prasad
Gruhanirman Sanstha

APPELLANT

Vs

Caste Certificate Verification Committee and Others

Shri. Suryavansh Balrup Thakur Vs Vishwanath Pandurang
Mahadeshwar and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Constitution of India, 1950 — Article 341, 342
Mumbai Municipal Corporation Act, 1888 — Section 5B

Citation : (2011) 2 ALLMR 362 : (2011) 2 BomCR 138 : (2011) 1 MhLj 310

Hon'ble Judges : R.M. Savant, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Girish Kulkarni and Sandeep Waghmare, in WP/4335/2007 and Kirit J. Hakani and Rahul Hakani, in WP/1148/2008, R.K. Mendadkar, for the Appellant; Girish Kulkarni and Sandeep Waghmare for Respondent No. 3 in WP/1148/2008, Kirit J. Hakani and Rahul Hakani for Respondent No. 6 in WP/4335/2007 and S.R. Nargolkar, G.P. for Respondents 1 and 4 in WP/4335/2007 and for Respondents 1 and 2 in WP/1148/2008, for the Respondent

Judgement

A.M. Khanwilkar, J.—All these proceedings are disposed of by this common Judgment, as overlapping issues are involved. For the sake of convenience, we would address the parties as per the description given in the cause title of the leading Writ Petition being Writ Petition No. 4335 of 2007.

2. The controversy that arises before us is on account of the invalidation of the caste claim of the Petitioner by the Scrutiny Committee. As a result of which, the Petitioner was required to vacate the Office of Municipal Corporator from Ward No. 86 of Mumbai Municipal Corporation. The Respondent No. 5 (Petitioner in WP/1148/08) who has been impleaded subsequently in the Writ Petition filed by the Petitioner had contested Election of 2007 from Ward No. 86 reserved for

Other Backward Classes (hereinafter referred to as "OBC"). The Petitioner claims that he belongs to Vaishyawani Caste, which according to him, is notified as OBC. In support of this claim, he relies on the Certificate issued by the Executive Magistrate, Kudal dated 17th May 1993. Whereas, the Respondent No. 5 claims that he belongs to Nai Caste which is admittedly notified as OBC. In the said election, the Petitioner was declared to be a returned candidate and the Respondent No. 5 as defeated candidate. The Respondent No. 5, therefore, filed election dispute on 17th February 2007 before the Small Causes Court in Mumbai being Municipal Election Petition No. 147 of 2007. During the pendency of the said election dispute, the caste claim of the Petitioner was scrutinised by the Divisional Caste Scrutiny Committee No. II, Konkan Bhavan. The Caste Scrutiny Committee, after evaluating all the documents pressed into service by the Petitioner, eventually held that the Petitioner was unable to establish the fact that he belongs to "Vaishyawani" Caste; whereas the oldest documents which had probative value would indicate that he belongs to "Wani" Caste. The Committee further opined that "Wani" was not included in the list of OBC notified by the State Government. On this finding, the Caste Scrutiny Committee concluded that the Petitioner does not belong to "Vaishyawani", OBC. Resultantly, the Caste Certificate issued by the Executive Magistrate, Kudal dated 17th May 1993 was declared as invalid and confiscated.

3. Essentially, against this decision, the Petitioner filed Writ Petition before this Court on 31st May 2007 being Writ Petition No. 4335 of 2007. The Petitioner moved for interim relief during the pendency of this Petition which, however, was refused on 31st July 2007, as the Court noted that the Petitioner had already vacated his Office. Thereafter, the Respondent No. 2 Municipal Commissioner passed order on 2nd August 2007, stating that the Petitioner has ceased to be Municipal Corporator with effect from 31st July 2007, on which date, the interim protection granted to the Petitioner came to be vacated by this Court. Against the order dated 31st July, 2007 passed by this Court declining to continue interim protection, the Petitioner carried the matter to the Supreme Court by way of SLP (Civil) 13854/2007, which however was dismissed on 20th August 2007.

4. In the meantime, this Court examined the question regarding validity of Section 5B of the Mumbai Municipal Corporation Act, 1888 along with similar challenge to the amended provisions contained in the Mumbai Provincial Municipal Corporation Act, 1949 as well as Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, Maharashtra Zilla Parishads and Panchayat Samitis Act and Mumbai Village Panchayats Act, 1950 vide Judgment and order dated 20th December 2007 in Writ Petition No. 5691 of 2007 and companion cases. By the said decision, it was held that the said amended provisions in the respective enactments were valid and intravires.

5. It is only thereafter, the Respondent No. 5 was advised to file Writ Petition before this Court inter alia to assail the letters issued by the Assistant Secretary of the concerned Department Exhibit "B" and Exhibit "C" dated 27th April, 1989

and 18th October, 1989 respectively. Besides, the Respondent No. 5 has also challenged the Government Resolution at Exhibit 5 dated 21st August 1996, whereby, the Caste "Vaishyawani" was also included in Entry No. 190 of the Government Resolution dated 12th October 1976. In addition, the Respondent No. 5 has challenged the Caste Certificate issued in the name of the Petitioner by the Executive Magistrate Exhibit "D" dated 17th May 1993, even though the same has already been invalidated by the Caste Scrutiny Committee in terms of its decision dated 30th May 2007. The above challenge was necessitated on account of the issues raised in the leading Writ Petition on behalf of the Petitioner. Whilst this Writ Petition filed by the Respondent No. 5 was pending, the Respondent No. 5 took out application for interim stay being Civil Application No. 858 of 2008. Another interim application has been filed by Vaishyawani Samaj Madhyavarti Sanstha being Civil Application No. 2395 of 2008 for intervening in the proceedings. Accordingly, the Writ Petitions as well as Civil Applications proceeded together for hearing.

6. We have heard Counsel appearing for both the private parties in the respective Petitions, the Counsel for the intervener as well as the learned A.G.P. Besides oral arguments, the parties have filed written submission. On consideration of the issues raised by the rival side, in our opinion, the following questions will arise for our determination:

(1) Whether the impugned decision of the Caste Scrutiny Committee suffers from any manifest error, in invalidating the Caste Certificate issued in favour of the Petitioner by the Executive Magistrate dated 17th May 1993, on the finding that the Petitioner belongs to "Wani" Caste and not "Vaishyawani" as claimed?

(2) Assuming that "Vaishyawani" or "Wani" are synonyms, are these Castes or sub-Caste covered by Entry No. 190 of the Government Resolution dated 12th October 1976?

(3) What is the efficacy of the subsequent letters issued by the Assistant Secretary of the Department dated 27th April 1989 and 18th October 1989; Government Resolution dated 9th August, 1995; Government Resolution dated 21st August 1996 and Government Circular dated 20th June 2008. Will any of these make any difference to the claim of the Petitioner?

(4) Whether no relief can be granted to the Respondent No. 5, having failed to challenge the Government Resolution dated 9th August 1995?

(5) Whether the Caste Certificate issued by the Executive Magistrate, Kudal dated 17th May, 1993 is without jurisdiction?

(6) Whether Respondent No. 5 has locus standi to challenge the subject letters issued by the Assistant Secretary and the Government Resolutions/Circular and the Writ Petition so filed by him suffers from laches?

7. These are the broad issues that will have to be answered to address the controversy brought before us.

8. Re: Question No. 1: Reverting to the first question, we may now elaborate as to the basis on which the Caste Scrutiny Committee proceeded to decide the caste claim of the Petitioner. The Petitioner had relied on several documents in support of his caste claim. The first such document is affidavit filed by Balkrishna Pandurang Mahadeshwar, wherein it is stated that his School record discloses that he belonged to "Vaishya" Caste. It is also stated in the said affidavit that the caste of his elder brother Dattaram Pandurang Mahadeshwar is recorded as "Wani" in his School record. He has also asserted that the Caste of the younger brother i.e. Petitioner herein is recorded as "Vaishya" in the School record. Besides, the Caste of his niece Kumari Pratima Dattaram Mahadeshwar is recorded as "Vaishyawani" in her school record. This affidavit has been discarded by the Committee on the finding that the caste claim cannot be authoritatively decided merely on the basis of the affidavit of the relations.

9. The Petitioner has then relied on the Caste Certificate issued in his favour as also Caste Certificates issued in favour of Balkrishna Pandurang Mahadeshwar, Shantaram Pandurang Mahadeshwar, Smt. Pratibha Dattaram Mahadeshwar. The Committee opined that the said Caste Certificates cannot be treated as documentary evidence in deciding the caste claim of the candidate because, it is for the Scrutiny Committee to verify the genuineness of the caste claim mentioned in the Caste Certificate.

10. Insofar as the School Leaving Certificate of the Petitioner dated 6th February 1990, the Committee noticed that the Caste mentioned therein was shown as "Vaishya". That Caste was not notified in the list of OBC in the State of Maharashtra and therefore was of no avail.

11. The Committee has then adverted to the School Certificate of Dattaram Pandurang Mahadeshwar dated 19th January 1996 in which his Caste was shown as "Wani". The Committee opined that the "Wani" Caste is not listed in the list of OBC in the State of Maharashtra and, therefore, cannot be considered.

12. The Committee then adverted to the School Leaving Certificate of Smt. Pratibha Dattaram Mahadeshwar dated 31st May 1994. In relation to this document, the Committee opined that the same was not prior to 1989. Besides, the said Pratima cannot be considered as forefather of the candidate/Petitioner. She was niece of the Petitioner. As a result, even this document has been discarded by the Court.

13. The Committee then adverted to the Caste Validity Certificate of Kshitij Vijay Mahadeshwar dated 15th May 1995 and Caste Validity Certificate of Sanjay Dattaram Mahadeshwar issued by the Divisional Caste Scrutiny Committee No. 1, Konkan Bhavan, Navi Mumbai. The Committee opined that in view of the exposition in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the claim of the Petitioner will have to be considered on its own facts.

14. The Committee then adverted to the Death Certificate of Pandurang Sonu

Mahadeshwar dated 15th April 1997. The same has been discarded on the finding that it does not mention the caste of the deceased and it cannot be considered.

15. It has then referred to the letter dated 20th February, 2007 given by the Petitioner addressed to the Divisional Social Welfare Officer, Mumbai along with Government Resolution dated 21st August 1996. Relying on the said document, it was contended on behalf of the Petitioner before the Committee that his claim was legitimate as he belonged to "Vaishyawani" Caste. The Committee, however, opined that the School Leaving Certificate of the Petitioner would indicate that his caste was "Vaishya" and which fact has been admitted in his own letter dated 20th February, 2007. The Committee went on to observe that in view of the exposition in Madhuri Patil's case (supra), the Caste notified by the State Government will have to be read as it is. It further held that Caste "Vaishya" cannot be read as "Vaishyawani".

16. The Committee then adverted to the Government Resolution dated 21st August 1996 which purports to include "Vaishyawani" in Entry 190 of the OBC Caste List along with already notified Castes. The Committee held that "Vaishya" Caste was not included in the list of OBC, for which reason, the Petitioner cannot get any benefit.

17. The Committee then adverted to the letter dated 18th June 1992 issued by the Under Secretary, Government of Maharashtra addressed to the Joint Director (CVC) Maharashtra State, Pune. In the said letter, it is mentioned that if the caste of students or parents are shown as "Vaishya", in such matter, if the candidate produces the other documents as Vaishyawani then the Caste Certificate should be issued. The Committee has noted that the said instructions were relevant to the Caste Certificate Issuing Authority and cannot bind the Committee.

18. The Committee has then adverted to the service book record of Sanjay Dattaram Mahadeshwar and noticed that it mentions his caste as Vaishyawani. This document, however, is discarded on the finding that the service book extract cannot be treated as basic or primary document to answer the claim of the Petitioner. It is a secondary evidence.

19. The Committee then placed reliance on the Vigilance Report dated 21st March 2007 given by the Police Inspector. The said report records that the Petitioner has not produced any documentary evidence of his forefathers showing that their Caste was recorded as "Vaishyawani".

20. The Committee has also considered the affidavit filed by the Petitioner himself which contained the family tree of the Petitioner's forefathers, but discarded the same on the finding that the affidavit cannot be the basis to decide the caste claim of the Petitioner.

21. Reference is then made to the Birth Certificate of Shantaram Pandurang

Sonu Mahadeshwar dated 3rd August 1949 and of Dattaram Pandurang Sonu Mahadeshwar dated 2nd January 1938, who are the real brothers of the Petitioners. The Committee opined that in the said Birth Certificates, the Caste of elder brothers of the Petitioners herein is shown as "Wani". However, "Wani" Caste is not notified in the list of OBC in the State of Maharashtra. The Committee also held that the said documents were the oldest documents and have greater probative value than the rest of the other documents. Relying on these documents and the noting in the Vigilance Report, the Committee proceeded to negative the caste claim of the Petitioner.

22. The Committee has also adverted to the Social Status Certificate given by Samaj Sanghatana certifying that the Petitioner belongs to Vaishyawani Caste. This document has been discarded on the finding that it does not have probative value.

23. The Committee has also adverted to the Primary School Leaving Certificate of Pratibha Dattaram Mahadeshwar dated 20th March 2007 in which her Caste was shown as "Vaishyawani". This document has been discarded on the finding that the said Pratibha Dattaram Mahadeshwar cannot be considered as forefather of the Petitioner.

24. The Committee, however, preferred to rely on the Birth Certificates of the elder brothers of the Petitioner which stated that their Caste was "Wani" only.

25. Suffice it to observe that the Committee has analysed each document produced by the Petitioner in support of his caste claim and has discarded the same either on the finding that the same was not primary document or relevant for authoritatively answering the caste claim of the Petitioner or that the same had no probative value. The Scrutiny Committee has essentially chosen to rely on the two Birth Certificates of the elder brothers of the Petitioner and the finding in the Vigilance Report. From the Birth Certificates of the elder brothers, it is noticed that their caste was shown as "Wani". Even the Vigilance Report finds that the Petitioner has failed to produce any documentary evidence of his forefathers showing their caste as "Vaishyawani". Consistent with this finding, the Committee proceeded to invalidate the Caste Certificate issued in favour of the Petitioner and held that the Petitioner does not belong to "Vaishyawani", OBC Caste.

26. Insofar as the opinion recorded by the Caste Scrutiny Committee, we are in agreement with the same. The Committee has analysed the caste claim of the Petitioner in conformity with the legal principle enunciated in the case of Madhuri Patil (supra). The crucial documents are the Birth Certificates of the elder brothers of the Petitioner which are dated 3rd August, 1949 and 2nd January, 1948 respectively. The same had greater probative value than the rest of the documents. The said documents would indicate that the Caste of the Petitioner is "Wani" only. Thus, the claim of the Petitioner that he belongs to Caste "Vaishyawani" has been rightly rejected by the Committee. We do not find any

manifest error in the opinion so recorded by the Committee.

27. QUESTION No. 2: The next question is: whether "Vaishyawani" or "Wani" is a synonym? From the original file maintained by the Department which was produced before us, we have come across the noting made by the concerned Officers that "Wani" is a class and not sub-caste of "Vaishyawani"; and cannot be treated as sub-caste of "Vaishyawani". That is the opinion recorded by the Department. That opinion prevailed till the same stood substituted on account of Government Circular dated 15th June 2008 which is founded on the basis of the opinion given by the Bapat Committee Report dated 4th March 2008. We shall deal with this aspect a little later.

28. Suffice it to observe that when the Caste Certificate was issued in favour of the Petitioner by the Executive Magistrate on 17th May 1993, at the relevant time "Wani" was not included in Entry 190 of Government Resolution in force. Even in the Government Resolution dated 9th August 1995 or for that matter dated 21st August 1996, "Wani" has not been separately shown as OBC in the list of State of Maharashtra.

29. The question is: whether Caste "Wani" or "Vaishyawani", as the case may be, are covered by Entry 190 of the OBC List in the State of Maharashtra? The Entry 190 came into being on account of Government Resolution dated 12th October 1976. The English translation thereof reads thus:

"List of other backward class.

GOVERNMENT OF MAHARASHTRA Social welfare Cultural affairs, Sports and tourism Department Government Resolution Kramank CBC-1470/631 17/De-5 Mantralaya Annex Building, Mumbai-400 032

Date 12 October 1976

Reference (1) Government resolution, Education and Social welfare Department Kramank-CBC-1467-m, Date 13 October 1967

(2) Government Resolution, Social welfare, Cultural affairs, Sports and tourism Department Kramank CBC 1470-1339-De-5 Date 26 July 1976.

Government Resolution: As per approval vide Government Resolution of Education and Social welfare Department dated 13 October 1967 Kramank CBC-1470-M and thereafter modified from time to time the list of Other backward Class at serial No. 190 now the following castes are to be added

"Serial No. 190-kathar, katharwani and kanthahar wani" (excluding Lingayat wani or ladwani)

In the name of and order by Governor of Maharashtra

Sd/- M.B. Sule Deputy Secretary Government of Maharashtra.

30. Significantly, this Government Resolution is issued in the name of and order

by Governor of Maharashtra. The Entry No. 190 which stands incorporated in the original Government Resolution enlisting the Caste included in the OBC List in State of Maharashtra vide Government Resolution dated 30th October 1967, the same does not include either Caste "Vaishyawani" or "Wani" as such. Going by this Government Resolution, the Executive Magistrate, Kudal, assuming that he had power to issue Caste Certificate in the name of the Petitioner, could not have granted that Certificate - as neither "Vaishyawani" nor "Wani" was included in Entry No. 190.

31. Question Nos. 3 and 4: The question is: whether the Executive Magistrate was obliged to issue the Caste Certificate in the name of Petitioner in the light of the letters issued by the Assistant Secretary to the Department of Social Welfare, Cultural Affairs, Sports and Tourism, Government of Maharashtra dated 27th April 1989 and 18th October 1989. From the original record which has been produced before us, it is noticed that the said letters were the outcome of representations made by individuals including a Member of Legislative Assembly. We find that one Sham Sadashiv Sonawane had made representation on 6th February 1989 to clarify as to whether "Kulwantwani" was part of Entry No. 190. Similarly, one Vitthal Dattatraya Kamerkar had made representation vide letter dated 24th February 1989 to clarify whether "Vaishyawani" was part of Entry No. 190. On the same lines, letter was received from local sitting M.L.A. dated 15th April 1989. In the light of these representations, the matter was examined at the Department level and on the basis of the noting made by the concerned Official, the Assistant Secretary of the Department of Social Welfare, Cultural Affairs, Sports and Tourism of Government of Maharashtra by communication dated 27th April 1989 informed the said Sonawane and Kamerkar in the following words:

(English Translation)

GOVERNMENT OF MAHARASHTRA Krs.CBC 1489/6182/[40]/Mavak-5 Social welfare, Cultural affairs, sports and tourism department, Mantralaya extn. Building, Mumbai 400 032.

Date: 27th April, 1989.

To,

Shri. Sham Sadashiv Sonavane, Marol Police Headquarters, Building No. 1, Room No. 4, [E 10] Marol, Mumbai 69.

Shri. Vitthal Dattatray Kamerkar, 2/11, Family Building, Dr. Batliwala Road, Parel, Mumbai -12.

Subject: Clarification about Kulwantwani and Vaishyawani castes.

Sir,

With reference to above referred subject under letters dated 6.2.89 and 24.2.89 written by you, the clarification is that in the list of Other Backward Class at serial No. 190 Kathar, Katharwani and Kanthahar wani castes are shown and

against these entries it is further written in brackets as "except Lingayat wani and Ladwani". Therefore the Kulwant wani and Vaishyawanis can also get Other Backward Class caste certificate and benefits as like Katharwani and Kanthahar wani.

Yours Truly,

Sd/- [J.D. Besharkaar] Assistant Secretary

32. We may also reproduce the other letter dated 18th October, 1989. English translation thereof reads thus:

(Office Translation from Marathi)

GOVERNMENT OF MAHARASHTRA Kra.CBC 1489/6182/[40]/Mavak-5 Social welfare, Cultural affairs, sports and tourism department, Mantralaya extn. Building, Mumbai 400 032.

Date: 18th October, 1989.

To,

All District Magistrate,

Sub: Clarification about Kulwantwani and Vaishyawani Caste.

Please see Government's even numbered letter dated 27/04/1989 in respect of above referred subject. (Copy if attached) By the said letter it was clarified that under the list at Serial No. 190 of the Other Backward Class, it is clearly mentioned as "Kathar, Katharwani & Kanthaharwani (except Lingayatwani and Ladwani). Therefore the Kulwantwani and Vaishyawani can also get Other Backward Class Caste Certificate and benefits as like Katharwani and Kanthaharwani.

2. It has been observed by the Government that you have not communicated the abovesaid clarification to all the Taluka Executive magistrates under your jurisdiction. Therefore, "Kulwantwani" and "Vaishyawani" people are facing hurdles in obtaining the Caste Certificate. So the abovesaid clarification made by the Government vide letter dated 27.04.1989 be communicated to all the Taluka Executive Magistrates under your jurisdiction so that the said community people will not repeat the complaints to the Government.

Sd/- (J.S. Besharkaar) Assistant Secretary

Copy forwarded to:

Joint Director (Jaa Pra T) Social Welfare, Maharashtra State, Pune.

33. Obviously, the above clarification is issued by the Officer of the Department. By no stretch of imagination, such communication can be treated as Government Policy decision to include "Vaishyawani" as part of Entry 190 of the OBC List. Such communication cannot supplant or for that matter amend or expand the

Entry No. 190 declared by the State Government vide Government Resolution dated 12th October 1976. The State Government alone could have done that by issuing another Government Resolution by order and in the name of the Governor and not otherwise, by following due procedure.

34. The legal position, by now, is well established. In that, the Apex Court in the case of *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, has restated the legal position. It will be useful to advert to the majority view of the Apex Court in this decision. In Paragraph 83, the Court posed question as to how the identification of backward class of citizens should be resorted to? And answered the same by saying that it must be left to the appropriate Authorities to identify the same. It has then indicated the procedure that ought to be followed by the said Authority appointed to identify the backward class of citizens. What is relevant to note is that the Apex Court was conscious of the fact that the approach for identification of backward class of citizens may differ from State to State since the conditions in each State may differ. It further observed that even within the State, conditions may differ from region to region. In other words, the class of citizens identified as backward class in one region of the State need not necessarily be backward class of citizens in the other region of that State. This enquiry, therefore, has to be undertaken objectively by the Authority appointed to inquire into those matters.

35. Indeed, in Paragraph 113 of the said Judgment, the Apex Court has opined that the Courts must extend due deference to the Judgment and discretion of the Executive. But the said discretion has to be exercised by the Executive by following necessary procedure. The procedure to be followed is already spelt out in the said decision. In Paragraph 117, the Court opined that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of OBC can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. It further observed that the advice/opinion of such body should ordinarily be binding upon the Government. What is pertinent to notice is the dictum in Paragraph 117 that even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and then action be taken on the basis of its recommendation. The Apex Court issued direction to constitute such Bodies both at the Central Level and at the level of States within four months from the date of the Judgment. The Judgment was pronounced on 16th November 1992. As a consequence to that decision, the State constituted Bapat Commission to inquire into these matters.

36. In the case of *Madhuri Patil (supra)* in Paragraph 9, the Apex Court has opined that no addition or amendment or declaration of Castes/Tribes or Sub-castes/parts of or groups of tribes or tribal communities to the List already published is permissible unless proper procedure in that behalf is followed.

37. In the case of *State of Maharashtra v. Milind and Ors.* reported in 2001 (1)

Mh.L.J. 1, the Constitution Bench of the Apex Court in Paragraph 34 concluded as follows:

34. In the light of what is stated above, the following positions emerge:

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

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Government or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar and Ors.* 1971(1) SCR 904 and *Dina v. Narayan Singh* 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.

38. The principle underlying the above decisions has been applied by the Division Bench of our High Court in the case of *Vasant Pandurang Narwade v. State of Maharashtra and Ors.* reported in 2002 (1) Mah.L.R. 812, while examining the challenge regarding the entry in the OBC List of Maharashtra. In Paragraph 20, the Court observed thus:

20. ...The committee's jurisdiction was limited to an enquiry whether the petitioner belongs to the Kunbi caste and nothing beyond the same. Even the order passed by the Apex Court remanding the matter for fresh adjudication also goes to show that the committee was required to verify the petitioner's caste claim of belonging to Kunbi caste by giving him a fresh opportunity of submitting evidence - documentary and oral. If the petitioner claims that there is no difference between Maratha and Kunbi caste and Maratha caste is part and parcel of Kunbi caste or a synonym of the same, his remedy is before the State Government and it is not within the powers of the scrutiny committee to

adjudicate upon the same. This view is supported by the judgment of the Supreme Court in the case of *State of Maharashtra v. Milind* (supra). While interpreting the provisions of Articles 341 and 342 of the Constitution, the Supreme Court held that it was not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community was included in the general name even though it was not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950 and the Scheduled Tribes Order must be read as it is. It was not even permissible to say that a tribe, sub-tribe, part of, or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority and it was not open to State Governments or courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

What has been held by the Apex Court in the case of Scheduled Tribes must be made equally applicable to the cases of OBCs and it has to be held that it is not open to the committee to modify, amend or alter the list of such classes and it is open only to the State Government to amend the same by following the necessary procedure and more particularly the law laid down by the Apex Court in the case of *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, . We may, in this regard, usefully refer to the decision of the Supreme Court in the case of *Ganesh Suroshe* (supra), wherein it was observed:

The notification of the President under Article 342 of the Constitution, subject to the Scheduled Castes and Scheduled Tribes Act, 1976, is conclusive and final. There are catena of decisions of this Court holding that the Court cannot examine, to find out the caste of the party, the basis of the certificate issued. The limited area the Court can survey is whether the caste mentioned in the presidential Notification would be applicable to the claimant or not.

(emphasis supplied)

Again the observations made in Paragraph 25 may be of some significance. Indeed, the controversy in that case was with regard to the entry Kunbi in OBC List. Whether the said Entry took within its fold Maratha as OBC, the Court observed as follows:

25. ...The State of Maharashtra, for the first time, recognized the Kunbi caste as one of the Other Backward Classes vide its resolution of 13th October, 1967 and it must be deemed that the State Government had addressed itself to the social realities. If the State Government was satisfied that there is a separate caste

called Maratha Kunbi it could have said so by issuing amending orders to that effect or declaring Maratha Kunbi as one of the castes in the Other Backward Classes....

It may be useful to reproduce the relevant portion of Paragraph 28 which read thus:

28. On the issue of synonyms as claimed by the petitioner in respect of "Maratha Kunbi" and "Kunbi" caste persons, it would be useful to refer to yet another judgment of the Supreme Court in the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, . The claimant therein had a certificate stating that he belonged to the "Konda Kapu" caste. On inquiry it was found that actually he belonged to the "Kapus" caste and not the "Konda Kapus" caste. However, the High Court had accepted the claim made by the claimant and the Supreme Court reversed the findings of the learned Single Judge as well as that of the Division Bench. The Apex Court observed that when the notifications declaring certain castes to be belonging to either Scheduled Castes, Scheduled Tribes or Other Backward Classes are issued, the respective castes" titles are clearly mentioned in such notifications and if the notification stated "Konda Kapus" or "Konda Reddies", the respective entries must be read specifically and there was no scope for the courts or Tribunals or the Committees to give different interpretations and accept persons belonging to "Kapus" or "Reddi" castes as belonging to "Konda Kapus" or "Konda Reddis....

(emphasis supplied)

39. From the line of Authorities, it is well established position that the entries in the notified list of OBC must be read as it is. Further, if the State Government intended to add, expand, or alter any of the existing Entry in the List of OBC in the State of Maharashtra, it ought to follow the necessary procedure enunciated by the Apex Court. That in any case, could not have been done by a clarificatory letter sent by the Department. The desired change was possible only by issuing Government Resolution by order and in the name of Governor of Maharashtra as was done to include Kathar, Katharwani and Kanthar wani (excluding Lingayatwani or Ladwani) as belonging to OBC, by incorporating Entry No. 190, vide G.R. Dated 12th October, 1976, in the original Government Resolution dated 13th October 1967. Thus understood, the two communications pressed into service dated 27th April, 1989 as also dated 18th October, 1989 will be of no avail.

40. That takes us to the argument resting on the Government Resolution dated 9th August, 1995. The same reads thus:

(ENGLISH TRANSLATION)

Regarding implementation of recommendations of Mandal Commission... Regarding including the caste in the list of Vimukta Jatis, Nomadic, Tribes and other Backward Class....

Government of Maharashtra Social Welfare, Cultural Affairs & Sports Department
Government Resolution Number: CBC-1093/7492/M. No. 28/BCC-5 Mantralaya
Extension Building, Mumbai- 400032 Date: 9th August, 1995

Read: 1) Government Resolution, Education & Social Welfare Department
Number CBC-461/R, dated 21/11/1961,

2) Government Resolution, Education & Social Welfare Department, Number
CBC-1467/R, dated 13/10/1967,

3) Government Resolution, Social Welfare Cultural Affairs, Sports & Tourism
Department, Number CBC 1682/58513/892/D-5, dated 29/1/1983,

4) Government Circular, Social Welfare, Cultural Affairs, Sports & Tourism
Department Number: CBC 1684/cont. 592/(1992)/BCW-5, dated 19/2/1986,

5) Government Resolution, Social Welfare Cultural Affairs & Sports Department
Number CBC-1093/7492/M.No. 28/BCC-5 dated 7/12/1994

6) Government Resolution, Social Welfare Cultural Affairs & Sports Department
Number CBC-1093/7492/M.No. 28/BCC-5 dated 4/1/1995.

Government Resolution: As the State Government has accepted the policy of
adopting the recommendation of Mandal Commission, following issues pertaining
to the Mandal Commission were under the consideration of the Government.

1) To include in the list of Other Backward Class, the castes, which are not
mentioned in the list of Denotified Castes, Nomadic Tribes and Other Backward
Class of the State of Maharashtra, but which are mentioned in the list of Other
Backward Class in the Report of the Mandal Commission.

2) To continue the benefits of respective castes as before in the state, to such
caste which are in the list of other backward class, Denotified Caste and Nomadic
Tribes Maharashtra State, but the same are not in the list of Mandal Commission.

3) To include, some Muslim and other caste such similar castes which fall under
the backward class, Vimukta Jatis and Nomadic Tribes, in the concerned category.

In this regard, the Government, after consideration, had taken the following
decisions vide Government Resolution, Social Welfare, Cultural Affairs and Sports
Department No. CBC-1093/7492/M.No. 28/BCC-5 dt. 7/12/1994.

1) The castes, which are shown in scheduled "A" and which are in the list of
Mandal Commission but not in the list of Maharashtra State, are being included in
other backward class category.

2) The Government grants approval to continue the benefits of the respective
castes, as before, to the four main castes and 28 similar castes of schedule "B"
which are included in the list of Other Backwards Class and Denotified castes and
Nomadic Tribes of the Maharashtra State, but which are not included in the list of
Mandal Commission.

3) As mentioned in schedule "C", the castes similar to those castes of Muslim and other castes, which are included in the list of other backward class Denotified caste and Nomadic Tribe are included in the category of other backward class.

This Government Resolution had been stayed vide Government Resolution Social Welfare, Cultural Affairs, and Sports Department CBC-1093/7492/M.No. 28/BCC-5, dt 4/1/95

The Government again grants approval to provide concessions (benefits) being availed by the persons of respective categories of all the religions including Muslims, without imposing the restriction of religion, in respect of the castes of Other Backward Class, Denotified Caste, and Nomadic Tribes category as mentioned in schedule "A", "B" & "C" enclosed with this government resolution as per paragraph 2 as mentioned hereinabove, from the date of issuance of this government resolution i.e. from 9/8/1995. Moreover the Government grants approval to continue the benefits, being received by the said two categories.

By order and in the name of the Governor of the Maharashtra V.V. Kamble
Deputy Secretary Government of Maharashtra

English translation of Exhibit "B" to the above Government Resolution reads thus:

Enclosure to the Government Resolution, Social Welfare, Cultural Affairs & Sports Department

Number CBC 1093/7492/M. No. 28/BCC-5, dated 9th August 1995

Schedule "B"

To continue the benefits of the respective cadres, as before, for the following castes which are included in the list of Denotified caste & Nomadic Tribes and Other Backward Classes of the State Government but not included in the list of Mandal Commission.

1) Powar or Pawar (Sr. No. 189)

(Persons having the surname Powar or Pawar are not in the list O.B.C.)

2) Ladasi (Sr. No. 199)

3) Thakar (Sr. No. 200)

4) Kanjarbhat (Sr. No. 5)

41. Indeed, this Government Resolution is issued by order and in the name of Governor of Maharashtra, but it proceeds on the assumption that "Vaishyawani" and "Kulwantwani" have already been included in the Entry No. 190 in the list of OBC in State of Maharashtra as notified vide Government Resolution dated 13th October 1967 read with Government Resolution dated 12th October 1976. As is

noticed earlier, after the decision in Indra Sawhney's case (supra) and the other decisions alluded hitherto, it was not open to the State Government to issue Government Resolution on its own without following due procedure. The fact that such procedure was not followed has been virtually conceded by the Department as can be discerned from the notings in the original record produced before us. The Department itself was conscious of the fact that the Government Resolution dated 9th August 1995 was issued without following that procedure, though the Commission was already established soon after the decision in the Indra Sawhney's case (supra) in 1992. If any change, alteration or amendment or for that matter, clarification regarding synonym of any Caste already included in the original list was to be done, it was possible only after following necessary procedure by making reference to the Commission in that behalf. It is only after the Commission was to opine one way or the other, such change could have been brought about by the State Government. In other words, the State Government could not have altered the original list on its own.

42. The argument of the Petitioner as well as the State Government that the change indicated in the Government Resolution dated 9th August 1995 was a policy matter of the State, does not commend to us. Even if it were to be a policy matter of the State, the same could be introduced only after following necessary procedure as has been indicated in the decision of Indra Sawhney's case (supra) and the subsequent decisions which have been referred to earlier. In that sense, the said G.R. which has been pressed into service is of no avail. In this context, it was argued that the validity of Government Resolution dated 9th August 1995 has not been challenged by the Respondent No. 5 in the companion Writ Petition. That, however, makes no difference to consider the claim of the Petitioner that the Petitioner was entitled to be considered as OBC belonging to "Vaishyawani" or otherwise. As a matter of fact, if the finding of the Caste Scrutiny Committee was to prevail and which has been affirmed by us, it would necessarily follow that the Petitioner belonged to Caste "Wani" and not "Vaishyawani" as claimed. Thus, the Petitioner cannot get benefit even of Government Resolution dated 9th August 1995 which purports to include only "Vaishyawani" and "Kulwantwani" as part of Entry 190. Further, the Government Resolution dated 9th August, 1995 is in respect of those Castes which were not enlisted in the Mandal Commission, but which were already provided benefit and facility by the State Government on account of inclusion in the OBC List of the State of Maharashtra. Indisputably, castes "Vaishyawani" and "Kulwantwani" are not notified in the original list of OBC or even in the amended Entry No. 190 inserted vide Government Resolution dated 12th October, 1976. Reference thereto in the Government Resolution dated 8th August, 1995 does not take the matter any further. In other words, the said Resolution is only to continue benefit to validly notified other backward class which were not included in the list of Mandal Commission.

43. That takes us to the Government Resolution dated 21st August 1996. The English translation of this Resolution reads thus:

(ENGLISH TRANSLATION) "Inclusion of Kulwantwani and Vaishyawani Castes in Other Backward Class.

GOVERNMENT OF MAHARASHTRA Social welfare, Cultural Affairs and Sports Department Government Resolution Kra.CBC-1496/Pra.Kra.38/Mavak-5 Mantralaya Extn. Building, Mumbai-400 032

Date 21 August 1996

Read: (1) Government Resolution, Education and Social Welfare Department Kramank-CBC-1467/M, Date 13 October 1967

(2) Government Resolution, Social welfare, Cultural Affairs, Sports and Tourism Department Kramank: CBC 1470/63117/De-5, Date 12 October 1976.

(3) Government letter, Social welfare, Cultural Affairs, Sports and Tourism Department Kramank: CBC 1489/6182/ [40]/Mavak-5 date 27 April 1989 and Date 18 October 1989.

Government Resolution: As per Government Resolution Social welfare Cultural Affairs, Sports and Tourism Department kramank: CBC 1470/63117/De-5, Date 12 October 1976. Kathar, Katharwani, Kanthaharwani (except Lingayat wani and Lad wani) are included in other Backward Class. Thereafter a clarification vide letter dated 18 October 1989 kramank: CBC 1489/6182/[40]/Mavak-5 was made that the Kulwant wani and Vaishyawani can also get Other Backward Class caste certificate and benefits as like Katharwani and Kanthahar wani. It was communicated to all District magistrates to bring it to notice of all Taluka Executive Magistrates vide letter dated 18 October, 1989. But this clarification was not brought to the notice of others except caste certificate issuing officers therefore it is observed that the people of these castes are facing problems while entering service. So Kulwantwani and Vaishyawani castes are considered to have been included with effect from 27 April 1989 and thus these castes have been entered into as modified entry given below.

Serial No. 190-"Kathar, Katharwani, Kanthaharwani, Vaishyawani, Kulwantwani (except Lingayatwani or Ladwani)".

In the name of and order by Governor of Maharashtra (S.Nu.Gavit) Under Secretary Government of Maharashtra.

44. By this Resolution, which is issued by order and in the name of Governor of Maharashtra, for the first time, the State Government, expanded the Entry No. 190 by including "Vaishyawani", "Kulwantwani" as OBC along with "Kathar, Katharwani and Kantharwani (except Lingayatwani and Ladwani)". Even this Government Resolution has been issued without following necessary procedure as was required to be followed in view of the dictum of the Apex Court in case of Indra Sawhney's case (supra) and the subsequent decisions referred to earlier. That position is reinforced from the notings made by the concerned Officials in the original file of the Department produced before us. A priori, even this

Resolution will be of no avail and cannot stand the test of judicial scrutiny.

45. Assuming that this Resolution was to prevail, the Caste "Vaishyawani" and "Kulwanwani" came to be included in original Entry No. 190 for the first time. Notably, caste "wani" does not find place even in this Government Resolution. Further, the benefit of this Entry cannot be given retrospective effect by a Government Resolution. Whereas, the Caste Certificate issued in favour of the Petitioner that he belongs to "Vaishyawani" was in anterior point of time. However, for the reasons already recorded by us, this Resolution cannot be sustained as mandatory procedure before introducing any change in the original Government Resolution was not followed by the State Government. That fact is indisputable, as is reinforced from the Official notings made in the original record.

46. That takes us to the effect of Government Circular dated 20th June 2008. Significantly, this Circular is issued in the light of the opinion given by the Bapat Committee. The report of the Bapat Committee is dated 4th March 2008. It reads thus:

(ENGLISH TRANSLATION) "Exhibit ? L

Confidential. No. SBC/Pune/Vaishyavani/2007-08/77 State Backward Class Commission. Maharashtra State Pune. Date: 4 March, 2008.

To,

Shri. B.G. Gondole, Section Officer (B.C.C.-5) Social Justice and Special Assistance Department, Mantralaya Annexe Building Mumbai-100 032.

Subject: Regarding submitting thorough study report in respect of Vaishyavani Caste Cadre.

Reference: 1) The even numbered letter dt. 9th July 2007.

2) The even numbered letter dt. 20 December 2007.

Under the above referred letters, a study report has been called for whether Vaishyavani, Vaishya and Vani are the different castes or similar to each other or are one and the same caste.

As per the decision taken in the State Backward Class Commission's meeting dt. 27.12.07 held at Pune, Judge Shri. R.M. Bapat, the Chairman of State Backward Class Commission and member Shri. D.K. Gosavi, together, personally visited Sawantwadi, Banda, Kudal and Kankavali in District-Sindhudurg during the period from the dt.12.2.2008 to 14.2.2008 and carried out field inspection. Similarly, they also had discussions with the office bearers of Vaishyavani Samaj, Dadar (E), Mumbai - 14 and accepted the representations and documents submitted by them.

The member Shri. D.K. Gosavi read out the said field inspection report in the meeting of the Commission, held at Dhule on the date 26-07-2008 and it was unanimously decided to submit to the Government the report together with the

opinion as follows.

1) On the basis of actual discussion held with the representatives of Vaishyavani Community at the time of field inspection as well as on the basis of entries in the documents submitted by them as proof, Hon"ble Chairman and member, State Backward Class Commission, M.S. Pune, unanimously recommend that all the three casts viz. Hindu-Vani, Hindu-Vaishya and Hindu-Vaishyavani are Vaishyavani itself and there appears no need to make any differentiation among them. Such different entries are seen in the column of caste, due to ignorance or oversight.

2) In case of the persons, in whose school leaving certificates it is mentioned as only Hindu, they should produce other documents (E.g. Entry in the Births and Deaths register or entry in the property register etc.) having the entries such as Vaishya, Vani or Vaishyavani, and if they do so, they shall be treated as Vaishyavani.

3) In the existing list of other backward class, correction such as "Vaishyavani means Vani and Vaishya" should be made against the word "Vaishyavani" appearing at Sr. No. 190 and accordingly correction should be made in the gazette.

Sd/- (illegible) Chairman State Backward Class Commission. Maharashtra State, Pune.

(emphasis supplied)

47. Notably, the reference made to Bapat Committee was limited to the question, whether Vaishyawani, Vaishya and Wani are separate and different Castes or otherwise? It is this reference which has been answered by the Bapat Committee.

48. The Counsel for the Respondent No. 5 has criticised the approach the Bapat Committee in giving opinion that Hindu-Wani, Hindu-Vaishya, Hindu-Vaishyawani all three are Vaishyawani or synonym of Vaishyawani on the argument that such opinion has been given only on the basis of two visits made in the entire State between 12th February 2008 to 14th February 2008 in Sindhudurg District and on 26th February 2008 in Dhule District. It was argued that no detail inquiry was made by this Committee to ascertain whether Vaishyawani belong to OBC throughout the State of Maharashtra or are only in some part or region of Maharashtra. Though we may not go into this argument, what we observe, is that, the reference made to the Bapat Committee was of limited nature as to whether Vaishyawani, Vaishya and Wani are synonym or different class or caste. No reference was made to the Bapat Committee to find out whether the above mentioned Castes were part of any of the castes already referred to in the original Entry No. 190 ("Kathar, Katharwani, Kanthaharwani (except Lingayatwani or Ladwani) inserted in original Government Resolution dated 13th October 1967, vide Government Resolution dated 12th October 1976. Unless such specific reference was to be made and were to be answered by the Committee, the State

Government on the basis of the report of the Bapat Committee dated 4th March 2008 could not have proceeded on the assumption that Hindu-Wani and Hindu-Vaishyawani were Vaishyawani and that the same were synonym of the castes referred to in the original Entry No. 190 of Government Resolution dated 13th October 1967 as amended by Government Resolution dated 12th October 1976. Nevertheless, the State Government proceeded to issue Government Circular dated 20th June 2008, English translation whereof reads thus:

Exhibit ? M

Clarification on "Vaishyawani" Caste ? Community

Government of Maharashtra Social Justice and Special Assistance Department, Government Circular bearing No. CBC ? 10/2007/M. No. 177/Ma. Va. Ka ? 5, Mantralaya Extension Building, Mumbai 400032 Date - 20th June, 2008.

Read- 1) Government Resolution, Social Welfare, Cultural Affairs and Sports Department, No. CBC ? 1096/ M. No. 48/ Ma. Va. Ka. - 5, dated 3rd June, 1996.

2) Government Resolution, Social Justice, Cultural Affairs, Sports and Special Assistance Department No. CBC ? 10/2001/M. No. 120/Ma. Va. Ka. - 5, dated 1st Nov. 2001.

3) Letter bearing No. S.B.C./Pune/Vaishyawani 2007-07/77, dated 4th March, 2008 from the State Backward Class Commission.

Circular

Due to the entry of their Caste, the people belonging to "Vaishyawani" Caste? Community were facing difficulties in obtaining Caste ? Certificate and in getting the same verified. The said Caste ? Community had made a Representation to the Government for removing the said problems. Moreover, in some cases, as Court matters had cropped up, the Honourable High Court, Mumbai had given orders to obtain a studious Report on the Castes viz. "Vaishya", "Wani" and "Vaishyawani" from the state Backward Class Commission, Pune and to submit the same to the Honourable High Court. Accordingly, a Report thereon was sought from the State Backward Class Commission, The State Backward Class Commission, by its letter bearing No. SBC/Pune/Vaishyawani/2007-08/77, dated 4th March, 2008, submitted a Report to the Government. As per the clarification given by the State Backward Class Commission in the said Report, all Competent Authorities and Divisional Caste Certificate Verification Committees are hereby given below mentioned instructions in connection with issuing Caste Certificates and Caste Validity Certificates to the persons belonging to "Vaishyawani" Caste.

1) All the three Castes viz. Hindu ? Wani, Hindu ? Vaishya and Hindu ? Vaishyawani are Vaishyawani (Caste) only and there seems no reason to make any differentiation between the same. Due to ignorance or through oversight, such different entries are found in the Caste Column. As such, the Commission has clarified that as regards the persons belonging to the said castes, if there is

any one entry from out of Hindu ? Wani, Hindu ? Vaishya and Hindu ? Vaishyawani in the School Leaving Certificates or any documents of their father/ grand-father or of any other person having blood-relation with them, then such persons are belonging to "Vaishyawani" (Caste) and therefore, Caste Certificate for being belonged to "Vaishyawani" Caste and Caste Validity Certificate should be issued to them.

2) As regards those persons in whose School Leaving Certificate only there is a reference of "Hindu", if such persons submit other documents bearing entries viz. "Vaishya", "Wani" and "Vaishyawani" (e.g. an entry made in the Birth ? Death Register or entries made in the Property Register etc.) as a proof, then they should be treated as belonging to "Vaishyawani" Caste and accordingly, Caste-Certificate for being belonged to "Vaishyawani" Caste and Caste Validity certificate should be issued to them.

5) This Government Circular is published on the web-site of the Government of Maharashtra and its Computer Code Number is 2008062011495001.

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

(Signature Illegible) (J.N. Rathod) Deputy Secretary, Government of Maharashtra

49. A priori, it is more than clear that even the Government Circular dated 20th June 2008 will be of no avail and cannot be the basis to assume that the original Entry No. 190 in the Government Resolution dated 13th October 1967 as amended by Government Resolution dated 12th October 1976 has been validly amended by the Government Circular under consideration. Besides, as we are inclined to set aside the Government Resolution dated 21st August, 1996 being illegal, it would necessarily follow that the castes "Vaishyawani" and "Kulwantwani" are not included or from part of Entry No. 190 as inserted vide Government Resolution dated 12th October, 1976. Thus understood, even this Government Circular, which is only clarificatory and does not purport to amend the Entry 190 as inserted vide Government Resolution dated 12th October, 1976, can be no basis to answer the controversy before us.

50. We have, therefore, no hesitation in taking the view that the Petitioner has not only failed to establish his caste as "Vaishyawani", but even the above said communications pressed into service or for that matter, the Government Resolutions/Circular which are referred to earlier will be of no avail to the Petitioner. The Petitioner's Caste Certificate has been justly invalidated by the Caste Scrutiny Committee.

51. We further hold that there is no valid amendment to the original Entry No. 190 inserted in Government Resolution dated 13th October 1967 vide Government Resolution dated 12th October 1976. As a result, the Entry 190 is limited to Caste "Kathar, Katharwani and Kantharwani (excluding Lingayatwani and Ladwani)". It was, therefore, not open either to the Caste Scrutiny Committee or for that matter, the State Government to alter, amend or modify

the said Entry unless proper procedure in that behalf was followed. Indeed, it is the prerogative of the State Government to amend or modify or alter the existing Entries in the list of OBC in State of Maharashtra, but that will have to be done in accordance with the procedure enunciated by the Apex Court in the abovesaid decisions.

52. The question is: what would be the cascading effect on the persons who have already taken benefit either on the basis of impugned communications or Government Resolutions dated 9th August 1995, 21st August 1996 and Government Circular dated 20th June 2008. We were informed that large number of persons were likely to be affected, who have already taken benefit as belonging to OBC covered by Entry No. 190 of the original list. We express no opinion in that regard and leave it to the wisdom of the State Government to take appropriate measures as may be advised.

53. Question No. 5: The argument of the Respondent No. 5 that the Executive Magistrate could not have issued Certificate indicating that the Petitioner belongs to Caste Vaishyawani on the basis of application made by third party. We find force in this argument. It is not as if the Petitioner was incapable of applying to the Executive Magistrate, if he so desired. The Application, however, was filed by one Subhash Sonu Mahadeshwar of Village Kusabe. It has been processed on the basis of the Certificate of Sarpanch and affidavit of said Subhash Sonu Mahadeshwar. In addition, reference is made to School Leaving Certificate dated 6th February 1990 of some other person than the Petitioner. We are afraid, the Executive Magistrate has plainly glossed over this crucial aspect. He erroneously proceeded to issue the Caste Certificate in the name of Petitioner. Even if the Executive Magistrate had jurisdiction, the exercise of that jurisdiction by the Executive Magistrate is definitely questionable in the fact situation of the present case.

54. Question No. 6: The Petitioner has questioned the locus of Respondent No. 5 to challenge the stated letters issued by the Assistant Secretary of the Department and the Government Resolutions/Circular. Besides, it is submitted that the Writ Petition filed by the Respondent No. 5 suffers from laches. We are not impressed by these objections. Insofar as locus is concerned, the Respondent No. 5 had challenged the validity of the Caste Certificate including by filing election dispute against the Petitioner. The Respondent No. 5 also participated in the proceedings before the Caste Scrutiny Committee. It is too late in the day for the Petitioner to contend that the Respondent No. 5 has no locus standi to participate in the proceedings before this Court. As a matter of fact, the Respondent No. 5 was required to file Writ Petition challenging the relevant communications and the Government Resolutions/Circular because the Petitioner placed reliance on the same to assert that "Vaishyawani" and "Wani" were synonyms of the castes mentioned in Government Resolution dated 12th October, 1976. More over, it is the case of the Petitioner that on account of the said communications and the Government Resolutions/Circulars, the Caste

Certificate issued in favour of the Petitioner by the Executive Magistrate was valid and proper. The plea taken by the Petitioner could be legitimately resisted by the Respondent No. 5 even in the Writ Petition filed by the Petitioner. However, realising the position that the stated communications and the Government Resolutions/Circular, on which reliance was placed by the Petitioner, were itself improper and not backed by proper authority and/or issued after compliance of the due procedure, the Respondent No. 5 was justly advised to file Writ Petition. Thus understood, the objection taken by the Petitioner about the locus standi of the Respondent No. 5 to challenge the impugned communications and Government Resolutions/Circular cannot be countenanced. At any rate, the Respondent No. 5 is justified in challenging the said communications and Government Resolutions/Circular so as to complain that wrong (pseudo) persons were getting benefit of reservation for OBC and were competing with genuine persons belonging to notified OBC, which entails in depriving opportunity to genuine and legitimate persons whose caste has already been included in the list of OBC in Maharashtra. In our opinion, therefore, the objection regarding locus of Respondent No. 5 to challenge the impugned communications and Government Resolutions/Circular in question, will have to be stated to be rejected.

55. Insofar as the objection regarding Writ petition filed by Respondent No.5 suffers from laches is concerned, even the same is devoid of merits. The Respondent No. 5 has filed the present Writ Petition after the issue regarding constitutional validity of Section 5B of the Mumbai Municipal Corporation Act came to be negatived. Besides, the Respondent No. 5 has filed Writ Petition during the pendency of Writ Petition filed by the Petitioner to counter the plea taken by the Petitioner. Accordingly, it is not correct to say that the Writ Petition filed by the Respondent No. 5 suffers from laches.

56. Taking any view of the matter, therefore, the Petitioner ought to fail. We accordingly proceed to pass the following order:

(1) Writ Petition No. 4335 of 2007 is dismissed with costs.

(2) Writ Petition No. 1148 of 2008 is made absolute in terms of prayer Clause (c) with costs. Prayer Clause (c) reads thus:

(c) that this Hon"ble Court may be pleased to issue Writ of certiorari or writ in nature of certiorari or any other appropriate writ, order or direction quashing/ striking down:

(i) the letter dated 27th April, 1989 Ex.B hereto as well as Letter dated 18th October, 1989 Ex."C" hereto.

(ii) The Government Resolution dated 21st August, 1996 bearing No. CBC/1496/ Pr.Kr.38/MVK/5 Ex."F" hereto

(iii) the Caste Certificate No. MAC/SR/1818/93 dated 17/05/1993, Ex."D" issued to Respondent No. 3 by the Executive Magistrate, Kudal being illegal, invalid, improper and without jurisdiction.

(3) In view of the disposal of Writ Petition, nothing survives in Civil Application Nos. 2263/2007, 1029/2008, 858/2008 and 2395/2008. The same are disposed of.

(4) We direct the Registry to retain the photostat copy of the entire original file produced before us and then to return the same to the Government Pleader.

57. At this stage, Counsel for the Petitioner as well as the Government Pleader prays for stay of operation of this Judgment. We have no difficulty in accepting this request. The Judgment shall not be given effect to for a period of twelve weeks from today. We make it clear that this interim arrangement will not enure to the benefit of the Petitioner.