Sunil Kumar Rai vs The State Of Bihar on 21 February, 2022

Author: K.M. Joseph

Bench: Hrishikesh Roy, K. M. Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.1052 OF 2021

SUNIL KUMAR RAI & ORS. Petitioner(s)

VERSUS

THE STATE OF BIHAR & ORS. Respondent(s)

J U D G E M E N T

K. M. JOSEPH, J.

1. This is a writ petition maintained under Article 32 of the Constitution of India. The petitioners, four in number, seek reliefs which read as follows:-

"A Issue appropriate writ, order or direction in the nature of certiorari quashing the notification number 689 of 2016 dated 23.08.2016 issued by Respondent No.1 in Bihar Gazette;

B Issue an appropriate writ, order or direction, directing the Government of Bihar to pay compensation to the petitioners due to illegal, unconstitutional notification of government of Bihar Bihar on the basis of FIR registered under wrong provision of SC and ST Act.

C Or pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the above said case."

2. The impugned notification is dated 23.08.2016, which reads as follows:-

> "BIHAR GAZETTE Extraordinary Marks Published by Government of Bihar 1 Bhadra 1938 (Sh) No Patna 689, Patna, Tuesday, 23 August 2016 General Publication Department From Rajender Ram, Chief Secretary of Government, To all Chief Secretary of all departments, all divisional Commissioner, all District Magistrate, the Secretary of Bihar Public Service Commission, Patna, Secretary of Bihar Staff Selection Commission, the Secretary Central Secretary Board (Constable recruitment, Patna, the controller of Examination Bihar Combined Entrance Competitive, Examination Board, Patna, Registrar, office of advocate General Patna High Court, and Secretary of Bihar State Election Authority, Patna) Patna- 15 dated 08/August/2016 Subject:- In regard to issue Scheduled Tribe Certificate and other facility to Lohara (Lohar) community.

Sir, 1 As per order in the above said subject it is stated that Lohara, Lohra (Lohar, Lohara) was mentioned at Item No.22 in the list of the Constitution Scheduled Caste and Scheduled Tribe order amendment Act 1976 which has been listed at item No.21 as Lohara, Lohra by the Constitution Scheduled Tribe order Amendment Act, 2006 (Act No.48 of 2006). 2 In this regard, it is worth mentioning that the Constitution Scheduled Caste Scheduled Tribe orders amendment Act 2006 No.48 of 2006 has been repealed by the Repealing and Amendment Act 2016 (Act No.23 of 2016) Parliament. Hence in the above stated situation and in the light of the constitution Scheduled Caste and Scheduled Tribe Order amendment Act 1976 (Act No.108/1976) approval is given to issue caste of certificate of Scheduled Tribe Certificate and other facility to Lohara (Lohar) Community.

Faithfully Rajender Ram Additional Secretary of Government" (Emphasis supplied)

3. The case of the petitioners, in a nutshell, is as follows:-

> The Lohar community in Bihar is not entitled to be treated as members of the Scheduled Tribe. The matter relating to Scheduled Tribes is governed by Article 342 of the Constitution. Invoking Article 342, it is the case of the petitioners that the original Order was issued by the President in 1950. Thereunder Lohars were not treated as members of the Scheduled Tribe. In fact, they were contemplated as members of Other Backward Class (for short 'OBC'). This position continued from the year 1970 till 1976 when an amendment took place at the hands of Parliament. The position, however, as to Lohars not being entitled to be treated as Scheduled Tribe did not undergo any transformation. Thereafter, in the year 2006, Act No.48 of 2006 came to provide as follows:-
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> "An Act further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of Scheduled tribes in the State of Bihar.
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> BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows: -

> 1. This Act may be called the Constitution (Scheduled Tribe) Short Title Order Amendment Act, 2006.
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> 2. The Gazette of India Extraordinary Part II-Sec 1] Amendment of the Constitution (Scheduled Tribes) Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.
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> 2. In the Constitution (Scheduled Tribes) Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, in the Schedule, in Part III relating to Bihar, for item 22 (Since renumbered as item 21), as appearing in the Hindi version of the said Act, the following shall be substituted, namely: -
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> "21. Lohara, Lohra".

4. Still, thereafter, Parliament came to repeal the just aforementioned enactment by Act 23 of 2016. Purporting to draw inspiration from the said enactment, the respondent- State has issued the impugned Notification. The result of the Notification is not far to seek as the last sentence of the said Notification lays bare the intent, purport and object of the Respondent-State. In other words, seeking shelter under the amending Act of 2016, approval was given to issue Scheduled Tribe Certificate and other facilities to Lohar community.

5. It is the case of the petitioners that this is per se unconstitutional and illegal. It occasions breach of Articles 14 and 21 of the Constitution. What is more, relying upon the same, proceedings have been initiated against the petitioners under the provisions of the Scheduled Castes and Scheduled Tribes (Preventions of Atrocities Act), 1989 (hereinafter referred to as 'the 1989 Act'). Petitioners were constrained to seek anticipatory bail. Petitioner Nos.2 and 4 were unsuccessful. In fact, they had to undergo custody and all this is solely on account of the fact that the respondent-State has proceeded to pass the impugned Notification which has come as a handle in the hands of persons who are not entitled to the protection under the 1989 Act, to use the enactment against the petitioners. This, in turn, as already noticed has occasioned grave injustice to the petitioners, including incarceration in jails. In fact, learned counsel for the petitioners Mr. S. K. Rai would point out that there are thousands of FIRs filed in the State of Bihar invoking the impugned Notification resulting in deprivation of the liberty of several persons. The case of the petitioners further is that the respondent-State had the audacity to disregard the declaration of law made by this Court, not once, but on three occasions. We shall refer to those decisions and it would suffice for our purposes to reiterate that the petitioners, in these circumstances, have approached this Court pointing out that the circumstances are such that it warranted the petitioners to directly approach this Court under Article 32 instead of approaching the High Court.

6. Per-contra, Mr. Ranjeet Kumar, learned senior counsel assisted by Mr. Azmat Hayat Amanullah, learned counsel appearing for the State of Bihar, would point out that the petitioners should have approached the High Court. What is at stake, according to the learned senior counsel, is some 'personal enmity'. It is also pointed out that there is a delay of about five years in seeking protection of this Court under Article 32 of the Constitution. The petitioners have challenged the impugned

Notification of the year 2016 after five years. He would submit that the petitioners were refused protection under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.'). Petitioners ought to have worked out their remedies as against those orders and it does not lie in their mouth to seek protection afforded under Article 32 of the Constitution in the facts of this case. FINDINGS

7. Article 32 of the Constitution provides for a Fundamental Right to approach the Supreme Court for enforcement of the Fundamental Rights. The founding fathers contemplated that the very right to approach this Court when there is a violation of Fundamental Rights, should be declared as beyond the reach of Parliament and, therefore, it is as a part of judicial review that the right under Article 32 has been put in place and invoked from time to time. That in a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court. This is, no doubt, subject to the power of the Court to relegate the party to other proceedings.

8. At the heart of the Constitution lies certain principles which have, in fact, been recognised as part of the basic structure. Article 14 of the Constitution proclaims right to equality. The right against unfair State action is part of Article 14. Unequals being treated equally is tabooed under Article 14 of the Constitution. A person entitled to be treated as a member of Scheduled Tribe under Article 342, cannot be treated on par with a person who is brought in by an incompetent Body, viz., the State in the manner done. Article 21 of the Constitution again is the fountain head of many rights which are part of the grand mandate which has been from time to time unravelled by this Court giving rise to the theory of unenumerated rights under the Constitution. While liberty is a dynamic concept capable of encompassing within it a variety of Rights, the irreducible minimum and at the very core of liberty, is freedom from unjustifiable custody.

With these prefatory remarks, we may pass on to consider the complaint of the petitioners and the response of the respondent-State on the same.

9. We may take up the first preliminary objection by the State, namely, that the petitioners have approached this Court with considerable delay. The impugned Notification is issued in August, 2016. A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or order on the basis that he may have no locus standi or that he is not an aggrieved person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. However, we may only indicate, ordinarily, the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge. We must not be oblivious to the fact that based on the Notification, it appears that FIRs came to be lodged by persons claiming to be members of the Scheduled Tribe community and seeking to invoke the 1989 Act. The FIRs lodged in the year 2020 occasioned the petitioners to approach Courts seeking protection under Section 438 of the Cr.P.C. Two of the petitioners have not secured such protection. Petitioner No.1, it appears was not arrested. But even assuming for a moment, that the petitioners have come with some delay, we find

reassurance from the opinion of this Court in the judgment reported in Assam Sanmilita Mahasangha & Ors. v. Union of India & Ors. (2015) 3 SCC 1, wherein this Court has inter alia held as follows:-

> 32. "…..Further, in Olga Tellis v. Bombay Municipal Corpn., it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner." Therefore, we do not think we should be detained by the objection. We would think that delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake.

10. Equally unimpressive is the further argument of the learned senior counsel for the respondent-State that what is at stake is the case of personal feud or personal enmity. This Court is not concerned with the merits of the case as such. What this Court is concerned is with the legal and constitutional aspects arising from the challenge to the impugned Notification in question. Once this Court is convinced that the Notification has no legs to stand on and must collapse, it becomes the Court's duty to grant relief.

11. Another objection which is raised by the learned senior counsel for the State is that this is a case again which should engage the attention of the High Court and this Court should not interfere under Article 32. We have already dealt with the true purport of Article 32. We do not think we should elaborate more on this aspect. We take the view that this is clearly an appropriate case for reasons to follow where this Court should consider the challenge to the impugned Notification.

12. Undoubtedly, the Constitution of India in Article 342 provides for the manner in which the members of the Scheduled Tribe are to be recognised. Article 342 provides for the power with the President after consultation with the State to specify the Tribes which are to be treated as Scheduled Tribes in that State or the Union Territory as the case may be. Parliament is empowered in sub-Article (2) to include or exclude from the list. This is the scheme.

13. The first decision of this Court which chronicles the annals of the dispute is the last of the three Judgments, i.e., Prabhat Kumar Sharma Vs. Union Public Service Commission And Others (2006) 10 SCC 587. Therein, it was, inter alia, held as follows:

> "8. Under the Constitution (Scheduled Tribes) Order, 1950 issued in exercise of powers conferred under Article 342(a) of the Constitution of India, at Sl. No. 20 the tribe "Lohara" was mentioned as a Scheduled Tribe for the State of Bihar. The first Backward Classes Commission was set up in the year 1953 known as the Kaka Kalelkar Commission. According to the report of the Kaka Kalelkar Commission, amongst the list of Backward Classes, "Lohar" was shown at Sl. No. 60. However, the Commission report also dealt with the Scheduled Tribes Order and the Commission

recommended that “Lohra” be added with “Lohara” in the Scheduled Tribes Order, 1950.

9. After the Kaka Kalelkar Commission Report, the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 was enacted which was brought into force with effect from 25-9-1956 and for Bihar, Entry 20 was substituted to read as “Lohara” or “Lohra”. Thus, right up to 1976 there was no ambiguity in the Scheduled Tribes Order as only “Lohara” was initially considered as a Scheduled Tribe and with effect from 1956 “Lohara” as well as “Lohra” were mentioned as Scheduled Tribes.

10. In the year 1976 the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was passed and in the English version of the same viz. Entry 22 the position as existing from 1956 was maintained. “Lohara” and “Lohra” were stated to be Scheduled Tribes. However, in the Hindi translation of the said entry “Lohara” was translated as “Lohar”. Thus, the Hindi translation had “Lohar” and “Lohra” as two Scheduled Tribes. After the 1976 amendment, members of the “Lohar” community started claiming themselves to be members of a Scheduled Tribe even though they had been identified as a Backward Class as early as in the year 1955 by the Kaka Kalelkar Commission.

11. Because of the ambiguity in the Hindi translation of the 1976 Scheduled Tribes Order, members of “Lohar” community claimed themselves to be members of a Scheduled Tribe. The first litigation which came to the Supreme Court on this subject was in Shambhoo Nath v. Union of India [CA No. 4631 of 1990 dated of on 12-9-1990 (Ed.: Coram: Ranganath Misra, M.M. Punchhi and K. Ramaswamy, JJ.)] . This came up for hearing before three Judges of this Court. This Court disposed of the appeal on 12-9-1990 [CA No. 4631 of 1990 dated of on 12-9-1990 (Ed.: Coram:

Ranganath Misra, M.M. Punchhi and K. Ramaswamy, JJ.)] by passing the following order: “1. Special leave granted.

2. The short point raised in this appeal is as to whether the Central Administrative Tribunal was right in holding that the appellant did not belong to the Lohar community which has now been declared as a Scheduled Tribe in Chapra District of Bihar. It is not in dispute that from 1976 onwards the community has been so included but according to the Postal Department of the Union of India, at the time when the appellant entered into service, the community had not been so included and, therefore, the recruitment on the footing that he was a member of a Scheduled Tribe entitled to reservation was bad.

3. We have looked into the record and have heard counsel for the parties. In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of amendment of the list in 1976 and the dispute as to whether the community was known as ‘Lohar’ or ‘Lohra’ and if it was the latter, it has been so

included from before, we do not think the Tribunal was justified in holding the view it has taken.

4. The appeal is allowed and the order of the Tribunal is vacated. The appellant shall now return to duty. The period between 16-12-1986 when the order removing him was made and the date when he would join in terms of our decision now he shall be entitled to 50% of his salary. In regard to all other service benefits, his service shall be treated to be continuous. This decision may not be taken as a precedent. No costs."(emphasis supplied) It may be noted that at that point this Court did not notice the discrepancy between the English and the Hindi translation of the Scheduled Tribes Order and proceeded on the premise that "Lohar" being mentioned in the Hindi version of the Order, the appellant was entitled to get the benefit of being a Scheduled Tribe. Even the counsel appearing on behalf of the Union of India did not point out to the Court the discrepancy and the order was passed treating the "Lohars" as members of the Scheduled Tribe. Rather the Union of India accepted the position that "Lohar" community is included in the Scheduled Tribe. This order was passed by the Court without any contest."

14. Next, we must notice the Judgment rendered by a Bench of three learned Judges of this Court in Nityanand Sharma and Another vs. State of Bihar and Ors. (1996) 3 SCC 576. Therein, the appellants who hailed from the State of Bihar and belonged to the Lohar Caste claimed the status as Scheduled Tribes under the Scheduled Tribes Order of 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. We need only notice the following paragraph Nos. 11, 13, 15:

"11. 'Lohra' or 'Loharas' are thus different from 'Lohar' in Bihar as 'Lohars', as noticed hereinbefore are ranked with 'Koiris' and 'Kurmis' whereas 'Lohra' or 'Loharas' are merely sub-castes, a sept of Mundas in Chotanagpur or sub-tribes of Asurs who are Scheduled Tribes.

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13. The question then is: Whether Lohars could be considered by the Court as synonyms of Loharas or Lohras? This question is no longer res integra. In Bhaiyalal v. Harikishan Singh [(1965) 2 SCR 877 : AIR 1965 SC 1557] , a Constitution Bench of this Court had considered in an election petition whether Dadar caste was a Scheduled Caste. It held that the President in specifying a caste, race or tribe has expressly been authorised to limit the notification to parts of or groups within the caste, race or tribes. It must mean that after examining the social and educational backwardness of a caste, race or a tribe, the President may come to the conclusion that not the whole caste, race or tribe, but parts of or groups within them should be specified as Scheduled Caste or Scheduled Tribe. The result of the specification is conclusive. Notification issued under Article 341(1), after an elaborate enquiry in consultation with the Governor and reaching the conclusion specifying particular

caste, race or tribe with reference to different areas in the State, is conclusive. The same view was reiterated in B. Basavalingappa v. D. Munichinnappa [(1965) 1 SCR 316 : AIR 1965 SC 1269] ." (Emphasis supplied)

15. Dealing with Shambhu Nath case, this Court held as follows:

"16. ... In Shambhu Nath case [CA No. 4631 of 1990, decided on Sept. 15, 1990] this Court, therefore, did not intend to lay down any law that Lohars are Scheduled Tribes. Unfortunately due to concession by the counsel for the Union, without due verification from English version, this Court accepted Hindi version placed before the Bench and held that they were included as Scheduled Tribes. There was an obvious mistake in accepting a mistaken fact. Therefore, this Court proceeded on that mistaken assumption without verification from the Act that Lohars are included in Part III of Second Schedule relating to the State of Bihar. Therein this Court stated thus:

"In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of the amendment of the list in 1976 we do not think that the Tribunal was justified in holding the view it has taken."

17. This Court, therefore, proceeded on the premise as admitted by the counsel that Lohar was included in the Act as Lohars in the Second Schedule as Scheduled Tribe. The counsel wants us to read the earlier sentence, viz., "We have looked into the record". In view of the factual quotation from the Act and the Second Schedule, as extracted in the earlier part of the judgment, the effect of the above sentence speaks for itself and seems to be otherwise. As a fact the Bench proceeded on the basis of the concession of the Union counsel. It proved to be an obvious mistake and as a fact the translated Hindi copy was placed before the Court and the Court proceeded on that premise.

..."

16. We may finally notice paragraph-20 of Nityanand Sharma (supra):

"20. Accordingly, we hold that Lohars are an Other Backward Class. They are not Scheduled Tribes and the Court cannot give any declaration that Lohars are equivalent to Loharas or Lohras or that they are entitled to the same status. Any contrary view taken by any Bench/Benches of Bihar High Court, is erroneous. It would appear that except some stray cases, there is a consistent view of that Court that Lohars are not Scheduled Tribes. They are blacksmiths. We approve the said view laying down the correct law."

17. A perusal of paragraph No.20 would reveal unambiguously that this Court declared that Lohar is an Other Backward Class and what is more, they are not Scheduled Tribes and the Court cannot give

any declaration that Lohars are equivalent to Loharas or Lohras or that they are entitled to the same status.

18. In the next judgment, which is reported in 1997 (3) SCC 406, Vinay Prakash and Others vs. State of Bihar and Others, in the very first sentence of the Judgment, this Court notices that it was the fourth attempt made by the Lohar community to get the status of Lohara. Thereafter, the Court proceeds to hold that Lohars are, admittedly, blacksmiths, a backward community in the State of Bihar, whereas Loharas are Scheduled Tribes in the State of Bihar. The Court further notices that an attempt was made to re-open the declaration contained in Nityanand Sharma (Supra) also. The Court held, inter alia, as follows:-

> "6. The question is whether a person, who is not a Scheduled Tribe under the Presidential notification, is entitled to get the status of a Scheduled Tribe. It is already held that though the English version of the Presidential notification clearly mentions "Lohara", there was no mention of Lohar. But while translating it, Lohars were also wrongly included as was pointed out by this Court in Nityanand Sharma case [(1996) 3 SCC 576] . It would, thus, be seen that the Presidential notification was unequivocal and, therefore, Lohars were not Scheduled Tribes within the meaning of the definition of "Scheduled Tribes" under Article 366(25) read with the notification issued by the President of India under Article 342(1) of the Constitution and, therefore, this Court had pointed out that they are not entitled to the status of Scheduled Tribes. It is clear that if a Presidential notification does contain any specific class or tribe or a part thereof, then, as held by this Court, it would be for Parliament to make necessary amendments in Article 342(2) of the Constitution and it is not for the executive Government but for the Court to interpret the rules and construe as to whether a particular caste or a tribe or a part or section thereof is entitled to claim the status of Scheduled Tribes. Under these circumstances, we think that the decision in Nityanand Sharma case[(1996) 3 SCC 576] does not require any reconsideration; so also other decisions referred to therein except the Palghat case [(1994) 1 SCC 359] , which was later considered in another judgment. Under these circumstances, we do not think that there is any illegality in the decision rendered by the Division Bench of the High Court warranting interference.
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> 7. It is then contended that the doctrine of prospective application of the judgment in Nityanand Sharma case [(1996) 3 SCC 576] may be applied. In support thereof, the learned counsel relied upon two judgments of this Court in State of Karnataka v. Kumari Gowri Narayana Ambiga [1995 Supp (2) SCC 560 : 1995 SCC (L&S) 887 :
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> (1995) 30 ATC 37] and Govt. of A.P. v. Bala Musalaiah [(1995) 1 SCC 184 : 1995 SCC (L&S) 275] . We are afraid, we cannot accede to the contention of the learned counsel. This is a case where the respondents were not entitled, from the inception, to the social status of Scheduled Tribes. Since the entry gained by them was based on wrong translation made by the Department in the notification and the order was obtained on that basis, the same cannot be made the basis of grant of the status of Scheduled

> Tribes. We cannot allow perpetration of the illegality since under the Constitution they are not at all entitled to the status of Scheduled Tribes. Under these circumstances, the above two judgments have no application to the facts in this case." (Emphasis supplied)

19. It was nearly after a decade, again that this Court had occasion to consider this question and the same is reported in Prabhat Kumar Sharma (supra). The Court, in fact, notices the fact that it was the second attempt to revisit the exposition of law in Nityanand Sharma (supra).

An attempt was made before this Court in Prabhat Kumar Sharma (supra) to contend that after the coming into force of the Official Languages Act, 1963, the Hindi version was the authoritative text and should there be a conflict between the Hindi and English version, the Hindi version should prevail. These arguments were specifically dealt with and rejected.

"21. Learned Senior Counsel appearing for the appellant contends that after the coming into force of the Official Languages Act, 1963 the Hindi version was the authoritative text and in the case of ambiguity between Hindi and English versions, the Hindi version would prevail. Article 348 of the Constitution clearly provides English to be the authoritative text in respect of Acts of Parliament, amendments to Acts subject to any law made by Parliament. The Official Languages Act, 1963 vide Section 3 thereof provides for continuance of English language for official purposes of the Union and for use in Parliament. Section 5 provides for a Hindi translation of all Central Acts and Ordinances promulgated by the President or if any order or rule or regulation or bye-laws issued under the Constitution or under any Central Act. Section 6 deals with the State Act with which we are not concerned in the instant case. From a conjoint reading of Article 348 of the Constitution and Sections 3 and 5 of the Official Languages Act, 1963, English continues to remain the authoritative text in respect of the Acts of Parliament."

20. Thereafter, we may only notice to do justice to the petitioners, the judgment of this Court reported in (2020) 14 SCALE 456, The State of Maharashtra & Anr. vs. Keshao Vishwanath Sonone & Anr. and we do not think we should burden our judgment further with reference to case law. Suffice it to say that this Court has categorically ruled that Lohars were not members of the Scheduled Tribe and they were members of the OBC in the State of Bihar.

21. In this background, we must consider the challenge to the impugned Notification. The stand of State is that in the year 1976, in the Hindi version of the Act, at serial No.22 of the List of Scheduled Tribes for Bihar, the social group 'Lohar, Lohra' (in Hindi) was specified. It is their further case that later by another amendment in the year 2006 (Act 48/2006), amendment was made to the Act of 1976, whereby the schedule in part III relating to the State of Bihar, for item No. 22 (since renumbered as item 21), as appearing in the Hindi version of the Act, the words 'Lohara, Lohra' were substituted for the words 'Lohar, Lohra'. Reference is made to the fact that during this time various associations of Lohar caste were repeatedly making representation and emphasizing that the word 'Lohara' was the English translation of the word 'Lohar'. It is further contended that in Act No.48 of 2006, persons belonging to the Lohar social group in the State of Bihar were not being recognized as Scheduled Tribe at the time. However, keeping in view the backwardness of the said

caste, an ethnographic report was commissioned to be prepared to evaluate the social and educational status of the Lohar social group. This group , inter alia, concluded on the basis of survey of 38 districts of Bihar that Lohara/Lohra were both mere synonyms of the Lohar social group and were one and the same. On the basis of the ethnographic report, the State recommended to the Central Government to include the Lohar social group in the list of Scheduled Tribes. During the pendency of the recommendation with the Central Government, it came to the notice of the State Government that Parliament had enacted Act 23 of 2016 which had repealed the earlier amending Act of 2006 which had substituted the words 'Lohar, Lohra' with the words 'Lohara, Lohra'. Various associations of the Lohar caste started claiming, owing to the repeal of the 2006 Act, that the status of the 1976 Act stood restored. In the light of the aforesaid and owing to the ethnographic report, the State decided to facilitate the Lohar caste in the State of Bihar as a Scheduled Tribe on the basis of the impugned Notification. The State Government has also requested the Central Government to delete the entry of 'Lohar' caste from the Central Government's list of OBCs and the response of the Central Government in this regard is awaited, is the further case of the State. In the meantime, Entry No.115 of the EBC List pertaining to caste 'Lohar' was deleted. Further additionally, and very recently, the State Government has also made a request to the Central Government dated 28.10.2021 requesting it to delete 'Lohar' caste from entry No.18 of the Central OBC list for Bihar by letter dated 08.08.2016 which was published as Gazette No.689 dated 23.08.2016 which is the impugned Notification.

22. We are deeply anguished by the state of affairs which has been brought to our notice through the contents of the petition under Article 32. This is not a matter which has not engaged the attention of this Court, which as we have noticed has dealt with the issue on as many as three occasions. It has been clearly and unequivocally declared that Lohars are not members of the Scheduled Tribe and they are members of the OBCs. Under the principle of separation of powers, in the manner we have it under the Constitution, it becomes the duty and the right of the Courts to settle disputes. The Constitution, no doubt, has given powers to the other organs of the State. When it comes to taking decisions which affect the rights of the citizens, it is the paramount duty of the Executive to enquire carefully about the implications of its decisions. At the very minimum, it must equip itself with the law which is laid down by the Courts and find out whether the decision will occasion a breach of law declared by the highest Court of the land. This is a case where we have noticed an unbroken line of reasoning and decisions as noticed in the three judgments which we have referred to. This Court has also pronounced on the aspect of the English language prevailing over the Hindi version, if there is a conflict.

23. We should further realize the impact of a decision on the Rights and what is more, Fundamental Rights of the citizens flowing from of Government's action: and the need to increasingly evolve a system, whereby decision making promotes and strengthens the rule of law. Respect for the decisions of the Courts holding the field are the very core of Rule of Law. Disregard or neglecting the position at law expounded by the Courts would spell doom for a country which is governed by the Rule of Law.

24. In this case, it is clear as daylight that the Lohars were not included as members of the Scheduled Tribe right from the beginning and they were, in fact, included as members of the OBCs

in the State of Bihar. This position has attained articulation at the hands of this Court and this Court has traced the history of the matter in the decision in Prabhat Kumar Sharma (supra).

25. What has apparently happened is that in the year 2006, initially, by the Act 48 of 2006, in the Hindi version of the 1976 amendment, the words 'Lohara, Lohra' were added as serial No.21 in place of the earlier serial No.22 which was subsequently renumbered as serial No.21. Apparently, this amendment did not and would not advance the case for the Lohars being Scheduled Tribes. On the other hand, it was in conformity with the English version which is the authoritative version. Subsequently, in 2016, it is true that Act 48 of 2006 came to be repealed. Even taking the effect of the repeal to be that Act 48 of 2006 which was repealed was never in the statute book, it cannot possibly lead to the position that Lohars can make their way into the list of Scheduled Tribes. What is the basis for the respondent-State to take it upon itself to issue the impugned Notification by which referring to the 2016 amendment repealing the 2006 Act, it proceeded to give approval to caste certificate of Scheduled Tribe to Lohara, Lohar community? Lohar is not same as Lohara. Including Lohars alongside 'Lohara' is clearly illegal and arbitrary. The English text which has been held to be the authoritative text and the decisions of this Court have been ignored. We cannot at all, approve this approach which at the very minimum betrays total non-application of mind which, in turn, leads to an inference that it has been arrived in an arbitrary manner. Thus, it attracts the wrath of Article 14 of the Constitution. This, in turn, justifies the approach of the petitioners under Article 32 of the Constitution.

26. The implications of this Notification are deep and it affects the rights of the citizens in the most adverse manner. The impact of the Notification is also to be gauged in the context of the 1989 Act as it is with reference to the Presidential Notification under Article 342 that prosecution under the 1989 Act is also to be judged. In the other words, a person who is Lohar on being treated as Scheduled Tribe would be entitled to invoke the protection of 1989 Act. That apart, it directly impinges upon the rights of the persons who stand in the shoes of the accused. The provisions of the 1989 Act have put stringent conditions in the matter of grant of bail. Anticipatory bail is not even permitted under Section 438 of the Code of Criminal Procedure, 1973 vide Sections 18 and 18A of the 1989 Act. No doubt, the effect of these provisions has been clarified by the Court [See (Prathvi Raj Chauhan vs. Union of India and others (2020) 4 SCC 727)].

27. These are aspects which should have been borne in mind. This is apart from the fact that inclusion of persons otherwise disentitled in the category of Scheduled Tribes would directly constitute an unjustifiable inroad into the rights of those members of the Scheduled Tribe in the matter of public employment and in other respects.

28. We are, therefore, of the view that there is absolutely no basis for respondent-State to have issued the impugned Notification. The limitation on the power of the Executive in this regard has been declared in Vinay Prakash (supra). We would think that the approach has been very casual and it has created a situation for which the State is solely responsible, even when it was entirely avoidable if only the respondent had taken proper care and applied its mind as we have already noticed.

29. In view of the aforesaid discussion, the writ petition must be allowed and the impugned Notification must perish.

The further, relief which is sought by the petitioners is that they must be given compensation. Undoubtedly, this Court has power of grant of compensation in the case of violation of Fundamental Rights. If any authority is required for the same, we may only refer to the judgment of this Court in Nilabati Behera @ Lalita Behera v. State of Orissa (1993) 2 SCC 746. We do not think that we should refer to any further judgments.

30. We have noticed that there is a case for the petitioners that petitioner Nos. 2 and 4 did undergo imprisonment for some time. No doubt, there is a case for the State that the prosecution in regard to the two petitioners was not solely premised on the complainants therein belonging to the Lohar caste setting up a case under the 1989 Act. There is no relief sought in regard to quashing of the proceedings. However, we do think that the petitioners must be adequately provided for in monetary terms which we would describe as costs. In the facts and circumstances of this case, we would think that an amount of Rs.5,00,000/- (Rupees Five Lakhs) must be imposed as costs.

31. Resultantly, we allow the writ petition. We quash the impugned Notification. We may notice that in the impugned Notification, the direction is to give certificate to 'Lohara', ('Lohar') community. While 'Lohara' is a member of the Scheduled Tribe, 'Lohar' is not. Therefore, while we have quashed the notification, it must not be understood as meaning that 'Lohara' which is already included in the category of Scheduled Tribe is to be affected by this Judgment. We clarify that the quashing of the impugned Notification will be qua 'Lohar' community and the Lohara will continue to get the benefit vouchsafed for them under the Presidential Order as amended by the Acts. We direct that the respondent No. 1 shall pay costs in the sum of Rs.5,00,000/- (Rupees Five Lakhs) which shall be done within a period of one month from today and the respondent shall produce proof of the payment of the costs by production of the receipt of the same within a period of six weeks from today. As regards the cases against the petitioners, it is for the petitioners to work out the remedies in the appropriate Forum and necessarily, the Courts will take note of the pronouncement which we have made today.

We would expect that the first and the second respondents will issue appropriate direction(s) to the authorities in the light of today's pronouncement.

Pending application(s), if any stand disposed of.

.....J. [K. M. JOSEPH] .....J. [HRISHIKESH ROY] New Delhi;

21st February, 2022.