Dayaram vs Sudhir Batham & Ors on 11 October, 2011

Equivalent citations: 2011 AIR SCW 6781, 2012 (1) SCC 333, AIR 2011 SC (SUPP) 678, (2011) 2 CLR 1010 (SC), (2011) 6 ALL WC 6161, (2011) 4 MPLJ 374, (2011) 11 SCALE 448, (2011) 4 KER LT 129, (2011) 5 ESC 761, (2011) 6 MAH LJ 414, (2011) 8 MAD LJ 930, (2011) 5 MAD LW 895, (2011) 108 ALLINDCAS 257 (SC), (2012) 1 SERVLJ 91, (2012) 1 ADJ 36 (SC), (2012) 2 BOM CR 684, (2012) 2 JCR 20 (SC)

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Bench: A.K. Patnaik, P. Sathasivam, R.V. Raveendran

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3467 of 2005

WITH

CIVIL APPEAL NO.3468 of 2005

Dayaram ... Appellant

Vs.

Sudhir Batham & Ors. ... Respondents

J U D G M E N T

R.V. RAVEENDRAN, J.

Respondents 1 to 3 claimed that they belonged to `Dhobi' caste, a scheduled caste in Bhopal district of Madhya Pradesh, and secured appointment to posts reserved for Schedule Castes. The appellant, who was the President of the Schedule Caste Employees Association, made a complaint to the Sub-Divisional Magistrate that respondents 1 to 3 did not belong to any scheduled caste and had produced false caste certificates. The Collector enquired into the matter and gave a report dated 20.1.2000 holding that the caste certificates produced by respondents 1 to 3 were false. Consequently, the appointments of respondents 1 to 3 were cancelled on 20.4.2000. Respondents 1 to 3 challenged the report of the Collector and their consequential termination in WP No. 2666/2000. The Madhya Pradesh High Court directed that the caste certificates of respondents 1 to 3 be verified by the State Level Screening Committee in accordance with the decision of this court in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development (1994) 6 SCC 241. The appellant, who had also approached the High Court, was permitted by the High Court to pursue his complaint against respondents 1 to 3 before the State Level Screening Committee.

2. The State Level Screening Committee held an enquiry, and after hearing respondents 1 to 3 and the appellant, made an order dated 4.2.2002 holding that respondents 1 to 3 did not belong to `Dhobi' caste and directed cancellation of the caste certificates issued to them. Aggrieved by the order dated 4.2.2002 of the Committee, respondents 1 to 3 again approached the High Court, in WP No.2074/2002. A learned single Judge of the High Court, by order dated 9.3.2003, allowed the writ petition, quashed the order of the scrutiny committee and declared that the respondents 1 to 3 belonged to a scheduled caste. Consequently he quashed the orders of termination of service with a direction to reinstate respondents 1 to 3 with all consequential benefits. The said order was challenged by the appellants by filing a Letters Patent Appeal (LPA No.409/2003). The LPA was dismissed by a division bench of the High Court, by order dated 4.8.2003 as not maintainable in view of direction (13) of the caste verification procedure in Madhuri Patil, which directed that "in case the writ petition is disposed of by a single Judge, then no further appeal would lie against that order to the division bench, but subject to special leave under Article 136." The said order of the division bench holding the appeal as not maintainable is challenged in Civil Appeal No.3467/2005. The appellant has also challenged the order of the learned Single Judge by filing a separate appeal in CA No.3468/2005, to avoid difficulties in the event of being unsuccessful in CA No.3467/2005. The Reference

3. These two appeals have been referred by a two Judge bench, to a larger bench by order of reference dated 31.3.2010 doubting the legality and validity of the directions issued in Madhuri Patil. We extract below the relevant portion of the order of reference:

> "In Kumari Madhuri Patit's case, as many as fifteen directions were given, which, in our opinion, are all legislative in nature. In our opinion, if a Court feels that some law should be made, then it can only make a recommendation to that effect to the legislature but it cannot itself legislate. It is upto the legislature to accept the recommendation or not. In Kumari Madhuri Patil case, the two Judge Bench of this Court in direction No.13 observed as follows:

> "The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136."

In our opinion, the direction that no further appeal will lie against the decision of a Single Judge of the High Court to a division bench was clearly not valid. It is well settled that an appeal is a creature of the statute and if the statute or the Letters Patent of the High Court or rules provide for an appeal, then an appeal will lie. For instance, the Court cannot say that no second appeal under section 100 CPC will be entertained in future by the High Court. That will be really abolishing section 100 CPC and this can only be done by the legislature and not by the courts. An appeal can be created by the legislature and abolished by the legislature. The court can neither creates an appeal nor abolish it.

Since the aforesaid direction in Kumari Madhuri Patil case (supra), are in our opinion not valid, we are of the opinion that they require reconsideration by a larger bench."

The directions in Madhuri Patil

4. In Madhuri Patil, a two Judge Bench of this Court found that spurious tribes and persons not belonging to scheduled tribes were snatching away the reservation benefits given to genuine tribals, by claiming to belong to scheduled tribes. This Court found that the admission wrongly gained or appointment wrongly obtained on the basis of false caste certificates had the effect of depriving the genuine scheduled castes or scheduled tribes of the benefits conferred on them by the Constitution. It also found that genuine candidates were denied admission to educational institutions or appointments to posts under the State, for want of social status certificate; and that ineligible or spurious candidates who falsely gained entry resorted to dilatory tactics and created hurdles in completion of the inquiries by the Scrutiny Committee, regarding their caste status. It noticed that admissions to educational institutions were generally made by the parents, as the students will be minors, and they (parents or the guardians) played fraud in claiming false status certificate. This Court was therefore of the view that the caste certificates issued should be scrutinised with utmost expedition and promptitude. To streamline the procedure for the issuance of a caste (social status) certificates, their scrutiny and approval, this Court issued the fifteen directions, relevant portions of which are extracted below:

> 1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.
>
> 2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other

particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of Scheduled Tribes, the Research Officer who has intimated knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims.

.....

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed..... After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/ guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

[emphasis supplied] This Court also observed that as the aforesaid procedure by providing for a fair and just verification, could shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine scheduled castes/scheduled tribes are not defeated by unscrupulous persons.

Questions for consideration

5. In view of the reference order, the following questions arise for consideration:

(i) Whether directions 1 to 15 in Madhuri Patil are impermissible, being legislative in nature?

(ii) Whether directions 11 and 12 in Madhuri Patil, which exclude the jurisdiction of the civil court to entertain suits challenging the decisions of the Caste Scrutiny Committees, violate section 9 of the Code of Civil Procedure?

(iii) Whether direction 13 in Madhuri Patil barring intra-court appeals against decisions of Single Judges in writ petitions, when such appeals are specifically provided for in State enactments/Letters Patents, is valid and proper?

R e: Question (i) directions (1) to (15) in K umari Madhuri Patil in general

6. This Court has a constitutional duty to protect the fundamental rights of Indian citizens. Whenever this Court found that the socio-economic rights of citizens required to be enforced, but there was a vacuum on account of the absence of any law to protect and enforce such rights, this Court has invariably stepped in and evolved new mechanisms to protect and enforce such rights, to do complete justice. This has been done by re-fashioning remedies beyond those traditionally available under writ jurisdiction by issuing appropriate directions or guidelines to protect the fundamental rights and make them meaningful.

7. In S. P. Gupta v. Union of India (1981) Supp. SCC 87, this Court observed :

"The judiciary has therefore a socio-economic destination and a creative function. It has, to use the words of Glanville Austin, to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice."

Referring to the British concept of judging, that is, a Judge is only a neutral and passive umpire, who merely hears and determines issues of fact and law, this Court further observed thus :

"Now this approach to the judicial function may be all right for a stable and static society but not for a society pulsating with urges of gender justice, worker justice, minorities justice, dalit justice and equal justice between chronic un-equals. Where the contest is between those who are socially or economically unequal, the judicial process may prove disastrous from the point of view of social justice, if the Judge adopts a merely passive or negative role and does not adopt a positive and creative approach. The judiciary cannot remain a mere bystander or spectator but it must become an active participant in the judicial process ready to use law in the service of social justice through a pro-active goal oriented approach."

"What is necessary is to have Judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are

> judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half hungry millions of India who are continually denied their basic human rights. We need Judges who are alive to the socio-economic realities of Indian life, who are anxious to wipe every tear from every eye, who have faith in the constitutional values and who are ready to use law as an instrument for achieving the constitutional objectives."

In Bandhua Mukti Morcha v. Union of India (1984) 3 SCC 161 expanded upon the role of this Court thus:

> "But the question then arises as to what is the power which may be exercised by the Supreme Court when it is moved by an "appropriate"

proceeding for enforcement of a fundamental right. It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, quo warranto and certiorari which can be issued by the Supreme Court but also writs in the nature of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any high prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right."

(emphasis supplied)

8. In Vishaka v. State of Rajasthan (1997) 6 SCC 241 this court recognized its obligation under Article 32 to provide for the enforcement of fundamental rights in areas with legislative vacuum. After detailed consideration, this Court held:

> "In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."

9. In Vineet Narain v. Union of India 1998 (1) SCC 226 this court took note of the fact that in exercise of the powers under Article 32 read with Article 142, guidelines and directions had been issued in a large number of cases; and that issue of such guidelines and directions is a well settled practice which has taken firm roots in our constitutional jurisprudence and that such exercise was essential to fill the void in the absence of suitable legislation to cover the field. Consequently this Court issued various directions with the following preamble:

> "As pointed out in Vishakha (supra), it is the duty of the executive to fill the vacuum by executive orders because its field is co-terminus with that the legislature, and where there is inaction even by the executive for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.
>
> 59. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and by virtue of Article 144 it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court."

(emphasis supplied)

10. In Kalyan Chandra Sarkar v. Rajesh Ranjan (2005) 3 SCC 284 this Court held that Article 142 is an important constitutional power granted to this court to protect the citizens. In a given situation when laws are found to be inadequate for the purpose of grant of relief, the court can exercise its jurisdiction under Article 142 of the Constitution. This court reiterated that directions issued by this court under Article 142 from the law of the land in the absence of any substantive law covering the field and such directions "fill the vacuum" until the legislature enacts substantive law. This court has issued guidelines and directions in several cases for safeguarding, implementing and promoting the fundamental rights, in the absence of legislative enactments. By way of illustrations, we may refer to Lakshmi Kant Pandey v. Union of India (1984) 2 SCC 244 [regulating inter-country adoptions], Common Cause v. Union of India (1996) 1 SCC 753 [regulating collection, storage and supply of blood for blood transfusions], M.C. Mehta v. State of Tamilnadu (1996) 6 SCC 756 [enforcing prohibition on child labour].

11. In Supreme Court Bar Association v.Union of India (1998) 4 SCC 409 a Constitution Bench of this Court held:

> "Indeed this Court is not a court of restricted jurisdiction of only dispute- settling. It is well recognized and established that this court has always been a law maker and its role travels beyond merely dispute settling. It is a "problem solver in the nebulous provisions dealing with the subject matter of a given case cannot be altogether

> ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

(emphasis supplied)

12. The directions issued in Madhuri Patil were towards furtherance of the constitutional rights of scheduled castes/scheduled tribes. As the rights in favour of the scheduled castes and scheduled tribes are a part of legitimate and constitutionally accepted affirmative action, the directions given by this Court to ensure that only genuine members of the scheduled castes or scheduled tribes were afforded or extended the benefits, are necessarily inherent to the enforcement of fundamental rights. In giving such directions, this court neither re-wrote the Constitution nor resorted to `judicial legislation'. The Judicial Power was exercised to interpret the Constitution as a `living document' and enforce fundamental rights in an area where the will of the elected legislatures have not expressed themselves. Benjamin Cardozo in his inimitable style said that the power, to declare the law carries with it the power and within limits the duty, to make law when none exists. (Nature of the Judicial Process, page 124). Directions issued in the exercise of Judicial Power can fashion modalities out of existing executive apparatus, to ensure that eligible citizens entitled to affirmative action alone derive benefits of such affirmative action. The directions issued in Madhuri Patil are intrinsic to the fulfillment of fundamental rights of backward classes of citizens and are also intended to preclude denial of fundamental rights to such persons who are truly entitled to affirmative action benefits.

13. We may now deal with the two decisions relied upon in the reference order. The first is the decision in Divisional Manager, Aravali Golf Club vs. Chander Haas [2008 (1) SCC 683]. In that case it was observed that Judges should not unjustifiably try to perform executive or legislative functions and in the name of judicial activism, cannot cross their limits and try to take-over the functions which belong to another organ of the State. The court also lamented upon the tendency of some Judges to interfere in matters of policy. These observations no doubt, deserve acceptance. These observations were made in the context of setting aside a direction of the High Court to create the posts of drivers and then regularize the services of respondents against such newly created posts. It was held that courts cannot direct creation of posts which is the prerogative of the executive or legislature. In fact in the very decision this court further observed that its observations did not mean that Judges should never be activists as many a time judicial activism is a useful adjunct to democracy and such activism should be resorted to only in exceptional circumstances where the situation forcefully demands it in the interest of the nation or the poorer or weaker sections of the society, keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not for the judiciary. Thus the decision in Aravali Golf Club in effect supports the principle which is the basis for the directions in Madhuri Patil. The principle is wherever the interests of weaker sections are adversely affected due to unscrupulous acts of persons attempting to usurp the benefits meant for such weaker sections, court can, and in fact should, step in, till a proper legislation is in place. It is not necessary to refer to the second case mentioned in the

reference order, that is Common Cause vs. Union of India - 2008 (5) SCC 511, for two reasons. First is, it reiterates Aravali Golf Club. Second is, on the relevant issue, the two learned Judges have differed and therefore the discussion is not of any assistance.

14. Therefore we are of the view that directions 1 to 15 issued in exercise of power under Articles 142 and 32 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine scheduled caste and scheduled tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this court was not taking over the functions of the legislature but merely filling up the vacuum till legislature chose to make an appropriate law.

Re: Question (ii) : Whether civil courts jurisdiction could be barred?

15. Direction (11) in Madhuri Patil states that order passed by the scrutiny committee shall be final and conclusive, subject only to challenge under Article 226 of the Constitution. Direction (12) states that no suit (before a civil court) or other proceedings before any other authority should lie against the orders of the scrutiny committee. The appellant contends that the right to file a civil suit cannot be taken away by a judicial order and that a suit could be barred only by a statute, either expressly or impliedly. Section 9 of the Code of Civil Procedure (`Code' for short) provides that courts have to try all civil suits unless barred. The relevant portion of the said section is extracted below :

> "The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

16. In Vankamamidi Venkata Subba Rao vs. Chatlapalli Seetharamaratna Ranganayakamma (1997) 5 SCC 460 this Court explained the scope of section 9 thus :

> "When a legal right is infringed, a suit would lie unless there is a bar against entertainment of such civil suit and the civil Court would take cognizance of it. Therefore, the normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance is either expressly or by necessary implication excluded..... Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded. However, in the development of civil adjudication of civil disputes, due to pendency of adjudication and abnormal delay at hierarchical stages, statutes intervene and provide alternative mode of resolution of disputes with less expensive but expeditious disposal.....It is also an equally settled legal position that where a statute gives finality to the orders of the special tribunal, the civil court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the civil court would normally do in a suit. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary that the statute creates a special right or liability and provides procedure for the determination of the right or

> liability and further lays down that all questions about the said right or liability shall be determined by the Tribunal so constituted and whether remedies is normally associated with the action in civil Courts or prescribed by the statutes or not. Therefore, each case requires examination whether the statute provides right and remedies and whether the scheme of the Act is that the procedure provided will be conclusive and thereby excludes the jurisdiction of the civil Court in respect thereof."

(emphasis supplied)

17. Scope of section 9 of the Code was again explained by this Court in Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa (2009) 4 SCC 299 as under:

> "Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim Ubi jus ibi remedium. A litigant, thus, having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless barred by statute, either expressly or by necessary implication.."

(emphasis supplied)

18. In Dhulabai v. State of MP (1968) 3 SCR 662 this Court enumerated the circumstances wherein civil court jurisdiction could be held to be excluded. They are:

> "(1) Where the statute gives a finality to the orders of the special tribunals, the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit.

Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court."

19. It is therefore clear that the jurisdiction of the civil court to entertain any suit of a civil nature arising under a statute can be excluded only when cognizance is expressly or impliedly barred by the statute which gives rise to such suits. In this case, the creation of the scrutiny committee is by the judgment of this Court. The procedure and functioning of the scrutiny committee is also in accordance with the scheme formulated by the said judgment. Thus if a suit is to be filed in a civil court in regard to the decision of the scrutiny committee, the cause of action for such suit would not arise under any statute, but with reference to an order of a committee constituted in pursuance of a scheme formulated by this court, by way of a stop-gap quasi -legislative action. The principle

underlying section 9 is that cognizance of any category of suits arising under a statute, can be barred (either expressly or impliedly) by that Statute. But in regard to cognizance of the category of suits arising from the scheme formulated by a decision of this Court (and not under a statute), the scheme formulated by the decision of the court is the `statute', and therefore the scheme can expressly or impliedly bar cognizance of such suits. This is because the `statute' which gives rise to a cause of action referred to in the aforesaid decisions in V. Venkata Subha Rao, Bal Mukund Bairwa and Dhulabai, in this case is substituted by the `quasi-legislative' stop-gap scheme created by the decision of this Court. As the scrutiny committee is a creature of the judgment in Madhuri Patil and the procedure for verification and passing of appropriate orders by the scrutiny committee is also provided for in the said judgment, there is nothing irregular or improper in this court directing that orders of the scrutiny committee should be challenged only in a proceeding under Article 226 of the Constitution and not by way of any suit or other proceedings. Section 9 of the Code and plethora of decisions which considered it, state that the civil court will have jurisdiction except where the cognizance of suits of civil nature is either expressly or impliedly barred.

20. One incidental submission about the nature and constitution of the scrutiny committee requires to be dealt with. It is submitted that scrutiny committee, directed to be constituted by Madhuri Patil, is neither a court nor a tribunal, but a committee consisting of government officers, namely, (i) an officer of Additional or Joint Secretary level or other officer higher in rank than the Director of the department concerned; (ii) the Director, Social Welfare/Tribal Welfare/Backward Classes Welfare, as the case may be; and

(iii) an officer, who has an intimate knowledge in the verification and issuance of social status certificates in the case of scheduled castes and a Research Officer who has intimate knowledge in identifying tribes, communities etc., in the case of scheduled tribes. The scrutiny committee does not have any judicial member. It is submitted that in the event of caste status being erroneously decided by the scrutiny committee, which does not have any `judicial' mind, the only remedy available for the aggrieved person would be a writ petition under Article 226 of the Constitution. Such a remedy cannot act as a efficacious substitute to the right to file a civil suit since the High Court exercising writ jurisdiction will not re-appreciate evidence whereas a civil court could do so. It is contended that the High Court's writ jurisdiction, which is concerned only with decision making process, is further curtailed by paragraph 15 in Madhuri Patil which directs as under :

> "The question then is whether the approach adopted by the high court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible it is not a ground to reverse the findings. The court has to see whether the committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the committee ultimately record the finding. Each case must be considered in the backdrop of its own facts."

It was submitted that not only the decision of the scrutiny committee is given finality on questions of fact, but even the power of judicial review is sought to be curtailed by the aforesaid observation in Madhuri Patil. It is pointed out that if the scrutiny committee wrongly holds a genuine caste certificate is to be a false certificate, and the certificate holder is prevented from approaching the civil court, such erroneous findings of fact by the committee which is a non-judicial body would attain finality, without any remedy to the certificate holder. It was therefore submitted that denial of the right to approach the civil court and restricting the remedy to only writ proceedings, in the anxiety to provide speedy remedy, has the potential of causing severe miscarriage of justice.

21. The assumption that para 15 of Madhuri Patil extracted above curtails the power of judicial review under Article 226 is not correct. It is inconceivable to even think that this Court, by a judicial order would curtail or regulate the writ jurisdiction of the High Court under Article 226. All that para 15 of Madhuri Patil does is to draw attention to the settled parameters of judicial review and nothing more. We make it clear that nothing in para 15 of the decision in Madhuri Patil shall be construed as placing any fetters upon the High Court in dealing with writ petitions relating to caste certificates.

22. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the scrutiny committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the scrutiny committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the scrutiny committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders. The scrutiny committee is not an adjudicating authority like a Court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this court wanted to eradicate. As this Court found that a large number of seats or posts reserved for scheduled castes and scheduled tribes were being taken away by bogus candidates claiming to belong to scheduled castes and scheduled tribes, this Court directed constitution of such scrutiny committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the concerned legislature makes appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

23. Having regard to the scheme for verification formulated by this Court in Madhuri Patil, the scrutiny committees carry out verification of caste certificates issued without prior enquiry, as for example the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self- affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the scrutiny committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one and a half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter.

Re: Question (iii) : Whether a right of appeal can be taken away by way of judicial order?

24. Direction (13) in Madhuri Patil directs that when a writ petition challenging the decision of the scrutiny committee is decided by a Single Judge of the High Court, no further appeal would lie against that order to the division bench and the decision of the learned Single Judge would only be subjected to special leave under Article 136 of the Constitution.

25. The State of Madhya Pradesh enacted the `Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005" which is deemed to have come into force from 1.7.1981. The said Adhiniyam confers a right of appeal before a division bench against the judgment of the single judge exercising jurisdiction under Article 226 of the Constitution of India. The relevant provision is as follows:

> "An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a division bench comprising of two judges of the same High Court."

26. A remedy by way of appeal, provided expressly by a statute cannot be taken away by an executive fiat or a judicial order. In Asia Industries (P) Ltd. v.S.B. Sarup Singh (1965) 2 SCR 756 this Court held:

> "Under the rules made by the High Court in exercise of the powers conferred on it under section 108 of the Government of India Act, 1915, an appeal under section 39 of the Act will be heard by a single Judge. Any judgment made by the single Judge in the said appeal will, under Clause 10 of the Letters Patent, be subject to appeal to that Court. If the order made by a single Judge is a judgment and if the appropriate Legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a single Judge under Clause 10 of the Letters Patent to the High Court."

(emphasis supplied) In A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602, an earlier bench had transferred the criminal trials pending before the Special Judge to the High Court of Bombay. A

bench of seven judges while overruling the earlier decision held that section 7(1) of the Criminal Law Amendment Act, 1952 created a condition that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the offences under section 6(1) of the said Act to be tried by special judges only; and therefore the order dated 16.2.1984 [reported in (1984) 2 SCC 183] transferring the cases to High Court was not authorized by law. It was also submitted that if the case was tried by a special judge, the accused had a right of appeal to the High Court and by transferring the trial to the High Court the said vested right of appeal was taken away which was impermissible in law. This court held that Parliament alone can take away vested right of appeal and no court whether inferior or superior can take away the said vested right. The following observations in that context are relevant:

> "The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal."

(emphasis supplied)

27. We may also refer to two other decisions dealing with the right of appeal vested in a litigant, on and from the date of commencement of the lis. Though in this case, we are not immediately concerned with interference with the vested right of appeal of a litigant, after the commencement of a lis, the principle underlying these two decisions are useful in understanding the right to appeal. A Constitution Bench of this Court in Hoosein Kasam Dada (India) Ltd.vs. The State of Madhya Pradesh and Ors. - 1953 SCR 987 held that right of appeal is a vested substantive right. This Court held:

> "The above decisions quite firmly establish and our decisions in Janardan Reddy v. The State [1950] S.C.R. 941 and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd. (1952) S.C.J. 564, uphold the principle that a right of appeal is not merely a matter of procedure. It is matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. In the language of Jenkins C.J. in Nana bin Aba v. Shaikh bin Andu (1908) ILR 32 Bom 337 to disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication."

In Garikapatti Veeraya v.N.Subbiah Choudhury (1957) SCR 488, this Court held that the vested right of appeal can be taken away only by a subsequent enactment. The following principles were enunciated:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties there to till the rest of the carrier of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit of proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

(emphasis supplied)

28. The right to file a writ appeal under the Adhiniyam (State Act) is a `vested right', to any person filing a writ petition. That right can be taken away only by an express amendment to the Act or by repeal of that Act, or by necessary intendment, that is where a clear inference could be drawn from some legislation that the legislature intended to take away the said right. The right of appeal to a division bench, made available to a party to a writ petition, either under a statute or Letters Patent, cannot be taken away by a judicial order. The power under Article 142 is not intended to be exercised, when such exercise will directly conflict with the express provisions of a statute.

Conclusion

29. In view of the above, we hold that the second sentence of clause 13 providing that where the writ petition is disposed of by a single judge, no further appeal would lie against the order of the division bench (even when there is a vested right to file such intra-court appeal) and will only be subject to a special leave under Article 136, is not legally proper and therefore, to that extent, is held to be not a good law. The second sentence of direction No.(13) stands overruled. As a consequence, wherever the writ petitions against the orders of the scrutiny committee are heard by a single judge and the state law or Letters Patent permits an intra-court appeal, the same will be available.

30. In the light of the above, we allow this appeal (CA No.3467/2005) and set aside the judgment of the Division Bench of the High Court holding the writ appeal as not maintainable. Consequently, the writ appeal (earlier Letters Patent Appeal) will stand restored to the file of the High Court. We request the High Court to hear and dispose of the said appeal (against order dated 9.5.2003 in W.P.No.2074/2002) on merits, expeditiously. Civil Appeal No.3468/2005 :

31. In view of our order in CA No.3467/2005 as above, CA No.3468/2005 challenging the order dated 9.5.2003 of the learned Single Judge is dismissed as infructuous.

We record our appreciation for the assistance rendered by Mr. Gopal Subramanian, as Amicus Curiae.

.....J. [R.V. Raveendran] .....J. [P. Sathasivam] New Delhi .....J. October 11 , 2011 [A.K. Patnaik]