State Of Maharashtra vs Milind & Ors on 28 November, 2000

Equivalent citations: AIR 2001 SUPREME COURT 393, 2001 (1) SCC 4, 2000 AIR SCW 4303, 2001 (1) UJ (SC) 271, 2001 (4) LRI 1025, 2001 (1) SRJ 54, 2000 (3) JT (SUPP) 213, 2000 (7) SCALE 628, (2001) 1 ALLMR 573 (SC), 2001 UJ(SC) 1 271, (2001) 1 MAHLR 552, 2001 SCC (L&S) 117, (2001) 1 MAH LJ 1, (2001) 1 MPLJ 1, (2001) 1 SCT 383, (2000) 6 SERVLR 301, (2000) 8 SUPREME 429, (2000) 7 SCALE 628, (2001) 1 BOM CR 620

Author: Shivaraj V. Patil

Bench: S.V.Patil, Dorasmy Raju

CASE NO.:
Appeal (civil) 2294 1986

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
MILIND & ORS.

DATE OF JUDGMENT: 28/11/2000

BENCH:
S.N.Pattanaik,, S.V.Patil, Dorasmy Raju, S.R.Babuu, D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J Shivaraj V. Patil J.

In this appeal, the following two questions arise for consideration:-

> 1) Whether at all, it is permissible to hold enquiry and let in 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) Whether `Halba Koshti' caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra, even though it is not specifically mentioned as such?

On 8-1-1988, this Court passed the following order:-

> "The prayer of the Union of India to be impleaded as party in both the appeals and writ petition as party respondent is granted. The name of the Union of India may be shown as the party respondent when the matter is listed.
>
> Both the sides agree that this matter involves a question which has been decided by the Constitution Bench consisting of 5 Hon'ble Judges of this Court and that there is also a subsequent judgment of a Division Bench of 2 Hon'ble Judges of this Court. One of the points raised is that there is a conflict between the two judgments. Under the circumstances, both sides state that this is a fit case for being referred to the Constitution Bench. We accordingly direct that this matter be placed before the Hon'ble Chief Justice for placing the same before the Constitution Bench. Both the sides state that the matter is very urgent and the matter be listed for early hearing. This request may, however, be addressed to the Constitution Bench."

Pursuant to the said order, the appeal is placed before us for consideration and decision.

The facts briefly stated to the extent they are relevant and required for the decision are the following.

The respondent no. 1 herein filed the Writ Petition No. 2944/84 at the Nagpur Bench of the Bombay High Court to quash the orders passed by the Director of Social Welfare (R-6) and the Additional Tribal Commissioner (R-5) which invalidated the caste certificate issued to him as belonging to Scheduled Tribe. It is stated that Raoji Koshti of Khapa Town in Nagpur Tehsil had a son by name Bajirao who had a son by name Sharad. The present respondent no. 1 namely, Milind is the son of said Sharad. On the basis of school certificate and other records of the respondent no. 1 and his close relatives, he obtained caste certificate from the Executive Magistrate, Nagpur on 20.8.1981 as belonging to 'Halba' Scheduled Tribe which is recognized as Scheduled Tribe. Having the said certificate, he applied to the Government Medical College for admission to MBBS degree course for the year 1985-86 in the reserved category meant for Scheduled Tribes. It appears his name was included in the merit list of the candidates belonging to the Scheduled Tribe. As per the procedure prescribed then, his certificate was sent for verification of the Scrutiny Committee constituted under the Directorate of Social Welfare, Pune. The said Committee after conducting enquiry and having due regard to documents placed on record and other aspects concluded that the respondent no. 1 did not belong to 'Halba' Scheduled Tribe. Consequently, the Caste Certificate issued to him as such was rejected. The respondent no. 1, aggrieved by the order made by the Committee, filed an appeal before the Additional Tribal Commissioner, Nagpur. The appellate authority having held further enquiry and after considering all aspects, by a detailed order dismissed the appeal, clearly recording a finding that the respondent no. 1 belonged to "Koshti" caste and that he did not belong to

"Halba/Halbi" Scheduled Tribe. The appellate authority went to the extent of saying that he belonged to "Koshti" caste thereof. The appellate authority collected the birth register indicating the birth of a female child to Bajirao Raghoji, the school record of Municipal Primary School, Khapa, indicating admission entries of said Bajirao, as also the Dhakal Kharij Register of Municipal Primary School containing the entry of admission of Sharad, the father of the respondent no. 1. From these records, it was found that the entire family of respondent no. 1 belonged to the 'Koshti' caste. The appellate authority recorded the statement of the father of the respondent, who accepted that these entries related to him, his father and his step-sister Shantabai, daughter of Bajirao Koshti. In his statement, he further admitted that all his relatives have married in their own caste and there was no instance of inter-caste marriage having taken place; in the records, name of the caste and occupation were separately mentioned. His own explanation was that entry 'Koshti' found in the documents did not indicate caste but it only pertains to occupation. The appellate authority looking to various other entries in the register found that the caste and occupation are separately mentioned. It was also noticed that the respondent no. 1 did not tender any evidence to show that he belonged to 'Halba-Koshti' sub-caste. The appellate authority referring to various imperial Gazetteers and other public documents for a period of 150 years came to the conclusion that the 'Koshti' was an independent and distinct caste having no relationship or identity with the 'Halba'/'Halbi' Scheduled Tribe. It also took note of the Circular dated 13.2.1984 issued by the Central Government that 'Halba-Koshtis' were seeking undue benefits of reservation by posing themselves as 'Halba'/'Halbi' Scheduled Tribe and in the light of clinching evidence the appellate authority felt itself bound to hold that the respondent no. 1 did not belong to the 'Halba' Scheduled Tribe and declined to give presumptive value to the school leaving certificate of the respondent no. 1 as postulated in the Circular dated 31.07.1981, in the face of overwhelming evidence and circumstances to the contrary. Hence the respondent no. 1 filed the writ petition as already mentioned above.

The High Court allowed the writ petition and quashed the impugned orders inter alia holding that it was permissible to enquire whether any sub-division of a tribe was a part and parcel of the tribe mentioned therein and that 'Halba-Koshti' is a sub-division of main tribe 'Halba'/'Halbi' as per Entry no. 19 in the Scheduled Tribe Order applicable to Maharashtra. Hence the State of Maharashtra has came up in appeal by special leave, questioning the validity and correctness of the order of the High Court allowing the writ petition of the respondent no.

1. Mr. S.K. Dholakia, the learned senior counsel for the appellant, urged that (1) the High Court committed an error in holding that it was permissible to hold an enquiry whether a particular group is a part of the Scheduled Tribe as specified in the Scheduled Tribe Order; (2) the High Court was not right in saying that the decision in Bhaiya Ram Munda vs. Anirudh Patar (1971)SCR 804) laid down the correct principle of law contrary to the Constitution Bench decisions of this Court as to the scope of enquiry and the power to amend the Scheduled Castes/Scheduled Tribes Order; (3) the High Court misinterpreted the report of the Joint Committee of the Parliament placed before it when representations for inclusion of "Halba Koshti" in the Scheduled Tribes Order were rejected; (4) the High Court also committed an error in invoking and applying the principle of stare decisis to the facts of the case in hand particularly when the earlier pronouncements were manifestly incorrect and were rendered without having the benefit of law laid down by this Court; (5) the High Court also

erred in setting aside the orders of respondents 5 and 6 which were made on proper and full consideration of evidence and authorities; (6) the findings of fact recorded by the authorities based on proper and objective assessment of evidence could not be disturbed by the High Court; (7) it was also not correct on the part of the High Court to give undue importance to the resolutions / circulars issued by the State Government contrary to law and without authority of law concerning the subject; and (8) it was not correct to say that the issue involved in the case was already closed when the same question was kept open by this Court in the State of Maharashtra vs. Abhay Sharavan Parathe (AIR 1985 SC 328).

Per contra, Mr. G.L. Sanghi, the learned senior counsel for the respondent no. 1 made submissions supporting and justifying the ultimate conclusion arrived at in the impugned judgment and order of the High Court. According to him, the old records relating to the period when there was no controversy, clearly supported the case of the respondent no. 1 and the school leaving certificate issued to the respondent no. 1 was valid. He also submitted that it was open to show that a particular caste was part of Scheduled Tribes coming within the meaning and scope of tribal community even though it is not described as such in the Presidential Order. The learned senior counsel was not in a position to say that the principle of stare decisis could be applied to the facts of the case in hand. He finally submitted that at this length of time, the career and future of the respondent no. 1 may be protected.

Mr. P.C.Jain, the learned senior counsel for respondent no. 3, submitted that more or less he had similar submissions to make as advanced by Shri Sanghi, the leaned senior counsel and there was nothing more to be added except saying that he represented the Adivasi Sangharsh Samiti, respondent no. 3 and the decision that will be rendered in the case will have great impact on large number of candidates.

We have deeply and carefully considered the contentions raised and submissions made by the learned counsel for the parties and examined the impugned judgment of the High Court.

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

> "341. Scheduled Castes - (1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State[or Union territory, as the case may be].
>
> (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid notification issued under the said clause shall not be varied by any subsequent notification".
>
> "342. Scheduled Tribes (1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by

> public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled tribes in relation to that State[or Union territory, as the case may be].
>
> (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

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

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

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

In the case on hand, we are concerned with a Scheduled Tribe. In exercise of the power conferred on him, the President issued the Constitution (Scheduled Tribes) Order, 1950 (for short 'the Scheduled Tribes Order'), which has been amended from time to time. By virtue of Clause (2), Parliament passed in 1976 the Scheduled Cates and Scheduled Tribes Orders (Amendment) Act, 1976 (Act 108/76). In the Order relating to Maharashtra,(Part IX), Entry 19 relates to 'Halba'/'Halbi'. Few Scheduled Tribes listed in Part IX of the Schedule relating to State of Maharashtra are given below, for example -

Part IX - Maharashtra

1) Andh 2) Baiga ..... 6) Bharia Bhumia, Bhuinhar Bhumia, Pando ..... 8) Bhil, Bhil Garasia, Dholi Bhil, Dungri Bhil, Dungri Garasia, Mewasi Bhil, Rawal Bhil, Tadvi Bhil, Bhagalia, Bhilala Pawra, Vasava, Vasave ..... 12) Chodhara (excluding Akola, Amravati, Bhandara, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal, Aurangabad, Bhir, Nanded, Osmanabad and Parbhani districts) 13) Dhanka, Tadvi, Tetaria, Valvi ..... 16) Dubla, talavia Halpati 17) Gamit, Gamta, Gavit, Mavchi, Padvi 18) Gond, rajgond, arakh, arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Kaiki; Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria,

Vade Maria 19) Halba, Halbi ..... 21) Kathodi, Katkari, Dhor Kathodi, Dhor Kathkari, Son Kathodi, Son Katkari ..... 47) .....

Although this Schedule is amended by law made by Parliament, Entry 19 is not amended for adding 'Halba-Koshti' in the said Entry. Looking to the other Entries extracted above in the same part, it is clear that wherever a particular area was to be excluded, it is so done by mentioning the same in the concerned (Entry relating to a tribe). Similarly, if a tribe or tribal community had other names and they were to be included in the Entry, it is done by mentioning them specifically. When there was agitation and representation to include 'Halba Koshti' within Scheduled Tribes even long before Amendment Act, 1976 was passed and the very fact that 'Halba-Koshti' was not included within Entry 19 relating to 'Halba/Halbi', negatives the claim of the Respondent No. 1. Further if `Halba Koshti' was part of group or sub-tribe of 'Halba'/ 'Halbi' Tribe, there was no need for representation to include it before Parliamentary Joint Committee.

In the debates of Constituent Assembly (Official Report, Vol. 9) while moving to add new Articles 300-A and 300-B after Article 300 (corresponding to Articles 341 and 342 of the Constitution), Dr. B.R.Ambedker explained as follows :-

> "The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and Tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purpose of this privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President."

(emphasis supplied) Thus it is clear that States have no power to amend Presidential Orders. Consequently a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Schedules Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said Article, it is expressly stated that said orders cannot be amended or

varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is the Parliament that is in a better position to know having means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Articles 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

In B.Basavalingappa vs. D. Munichinnappa , a Constitution Bench of this Court has held thus :-

> "It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of Caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order[see Aray (Mala) Dakkal (Dokkalwar) etc.] Therefore generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the Order."

(emphasis supplied) Thereafter looking to the peculiar circumstances of the case, the Court went on to say that :-

> "The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-orgnisation of 1956 there was no caste known as Bhovi at all. The Order refers to a scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after

> consultation with the Rajpramukh in the Order when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to courts to find out which caste was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstance therefore which necessitated the taking of evidence to determine which was the caste which was meant by the word "Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956."

Again a Constitution Bench of this Court in a later decision in Bhaiyalal vs. Harikishan Singh and Others did not accept the plea of the appellant that although he was not a Chamar as such he could claim the same status by reason of the fact that he belonged to Dohar Caste which is sub-caste of Chamar. Even after referring to the case of Basavallingappa (supra) it was held that an enquiry of that kind would not be permissible in the light of the provisions contained in Article 341 of the Constitution. In that case the appellant's election was challenged inter alia on the ground that he belonged to the Dohar Caste which was not recognized as a Scheduled Caste for the district in question and so his declaration that he belonged to the Chamar Caste which was a Scheduled Caste was improper and was illegally accepted by the Returning Officer. The Election Tribunal declared that the election was invalid. On appeal the High Court confirmed the same. This Court also dismissed the appeal pointing out that the plea that the Dohar Caste is a sub-caste of the Chamar Caste, could not be entertained in view of the Constitution Scheduled Castes Order, 1950 issued by the President under Article 341 of the Constitution. It is also stated that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The notification referred to Chamar, Jatav or Mochi. The Court observed that the enquiry, which the Election Tribunal could hold was whether or not the appellant is a Chamar, Jatav or Mochi and held thus :-

> "The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341."

(emphasis supplied) Referring to the case of Basavallingappa (supra) the Court explained thus :-

"In the case of B.Basavalingappa vs. D. Munichinnappa & Ors. this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent no. 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while

holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be :"It may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste a and, therefore, must be deemed to be included in caste A". That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted." (emphasis supplied) It may be noticed that in both the Constitution Bench judgments (supra), P.B.Gajendragadkar, C.j., K.N. Wanchoo, and M.Hidayatullah JJ. were common members.

In Parasram and Anr. vs. Shivchand and Ors.

referring to the two Constitution Bench judgments of this Court in Basavallingappa and Bhaiyalal aforementioned, this Court declared that :-

> "These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazetteers and the glossaries on the Punjab castes and tribes to which reference was made at the Bar to find out whether mochi and chamar in some parts of the State at least meant the same caste although there might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which mochis do not. However, that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a mochi, he could still claim to belong to the scheduled caste of chamars and be allowed to contest an election on that basis."

In that case a good deal of evidence was adduced and arguments were advanced as to whether the word `Chamar' and `Mochi' were synonymous. This Court further observed :-

> "Once we hold that it is not open to this Court to scrutinize whether a person who is properly described as a mochi also falls within the caste of chamars and can describe himself as such, the question of the impropriety of the rejection of his nomination paper based on such distinction disappears."

In two cases, Bhaiya Ram Munda vs. Anirudh Patar & Ors. and Dina vs. Narayan Singh , Division Benches of this Court took a contrary view to say that evidence is admissible for the purpose of showing what an Entry in the Presidential Order was intended to be while stating that the Entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated.

A three Judge Bench of this Court in Srish Kumar Choudhury vs. State of Tripura & Ors. referring to the two Constitution Bench Judgments (supra) and the Division Bench judgments of Bhaiyaram

Munda and Dina (supra) has held thus:-

> "The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community; but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in the scheduled tribes is genuine and should, therefore, be entertained."

Yet, again a three Judge Bench of this Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. vs. State of Kerala & Anr. has held that neither the State Government nor the court can enquire into or let in evidence relating to any claim as belonging to Scheduled Castes in any Entry of the Scheduled Castes Order. Scheduled Castes Order has to be applied as it stands until the same is amended by appropriate legislation. Para 20 of the said judgment reads thus:-

> "Learned counsel for the State relied upon the decision in Bhaiya Ram Munda vs. Anirudh Patar referred to in paragraph 15 of the judgment in Srish Kumar Choudhury case for the view taken there was that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to mean. In paragraphs 8, 9, 10 and 11 of the judgment, in Srish Kumar Choudhury case the Constitution Bench judgments referred to above are discussed, as also two other judgments taking the same view. Then, in paragraph 14, the judgments of this Court in the case of Dina vs. Narayan Singh and Bhiya Ram Munda vs. Anirudh Patar are referred to and it is stated that both were rendered by the same Bench of two learned Judges. Paragraph 14 goes on to set out the substance of the decision in Dina case and paragraph 15 sets out the substance of the decision in Bhaiya Ram case. In paragraph 16 it is said,: "These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the court to make any addition or subtraction from the Presidential Order."

There is, therefore, no doubt that the Court in Srish Kumar Choudhury case accepted and followed, as it was bound to do, the Constitution Bench judgments and not the two Judge judgments in the Dina and Bhiya Ram Munda cases."

In Nityanand Sharma & Another vs. State of Bihar and Others the view expressed is that it is for the Parliament to amend the law and the Schedule to include or exclude from the Schedule a tribe or tribal community or part of or group within a tribe or tribal community in the State, District or Region and its declaration is conclusive. The court has no power to declare synonymous as equal to the tribes specified in the Order or include in or substitute any caste / tribe etc. In the impugned

judgment, the High Court refers to the two Constitution Bench judgments in Basavalingappa and Bhaiyalal and also notes statement made in the said decisions that "It may be accepted that it not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order (See Aray (Mala), Dakkal (Dokkalwar) etc). Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily, therefore, it would not have been open in the present case to give evidence that the Voddar Caste was the same as the Bhovi Caste specified in the order for Voddar Caste is not mentioned in brackets after the Bhovi Caste in the Order."

> "However, that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a Mochi, he could still claim to belong to the Scheduled Caste of Chamars and be allowed to contest an election on that basis." The High Court again, in paragraph 24 of the impugned judgment, observed that, "it is quite clear that the list once prepared by the President can be amended only by the Parliament and by none else". Having said so, the High Court went wrong in relying on Division Bench judgments of this Court in the cases of Bhaiya Ram Munda and Dina and the Full Bench decision of Orissa High Court in K.Adikanada Patra vs. Gandua (AIR 1983 Orissa 89), to take a contrary view in saying that there was no legal bar in holding enquiry as to whether 'Halba-Koshti' is a part and parcel or sub division of 'Halba'/'Halbi' or not. We have no hesitation in saying that the High Court committed a serious error in not following the aforementioned two Constitution Bench judgments of this Court and preferring to follow Division Bench judgments of this Court and the Full Bench judgment of Orissa High Court which did not lay down the law correctly on the question.
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> Being in respectful agreement, We reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned Entry in the Presidential Order when it is not so expressly or specifically included. Hence, we answer the question no. 1 in negative.
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> The Director of Social Welfare, Maharashtra, Pune (R6) on an elaborate enquiry by a reasoned and detailed order invalidated the caste certificate issued to respondent no. 1 as belonging to 'Halba' Scheduled Tribe. The Additional Tribal Commissioner, Nagpur Division, Nagpur (R5), on further enquiry in the appeal filed by the respondent no. 1 dismissed the appeal by a well-merited order passed on detailed and objective consideration and evaluation of the evidence placed on record. The feeble argument based on circulars issued by State Government advanced on behalf of the

respondent no. 1 was that the old records relating to undisputed point of time and the school certificate should have been accepted, was rejected for the reasons stated in the orders passed by the Director of Social Welfare and the Additional Tribal Commissioner - the appellate authority. The Scrutiny Committee, as is evident from its decision dated 16.11.1983, found that the word `Halba' in the service book entry in respect of uncle of respondent no. 1 was written in a different ink and it was unworthy of credence; the census report of the year 1931 of the Khapa town did not show even a single digit population of Halba/Halbi Tribe; the respondent no. 1 gave answer to the questionnaire that he was not aware about the traits and characteristics, customs, deities, religious beliefs etc. of the Halba Tribe. On further enquiry in the appeal, it was revealed that the entry at Sr. No.3065 in the Dakhal Kharij Register of the Municipal Primary School, Shendurjunaghat, Amravati of the year 1944-45 shows that the caste of Sharad, son of Bajirao, father of the respondent no. 1 was Koshti; in the Birth Register of Khapa town the entry dated 2.5.1934 related to a female child Shantabai born to Shri Bajirao revealed the caste of Shri Bajirao as Koshti; entry at Sr. No. 913 in the register maintained by the Municipal Primary School, Khapa, for the period 1918-1932 in respect of said Bajirao was shown as belonging to `Koshti' caste and his occupation was shown in the separate column as `weaving'. The appellate authority took note of the preponderance of uninterrupted and consistent evidence of over 150 years comprising of official publications and authorities like the Imperial and District Gazetteers, Revenue Settlement Reports, Decennial Census Reports and works of renowned Sociologists and Ethnographers. Thus having regard to the evidence and material on record, the appellate authority concluded that the 'Koshti' Caste on one hand and the 'Halba' Tribe on the other constituted two different and distinct entities. After reading the said orders, we find that the authorities rightly rejected the claim of the respondent no. 1 as belonging to Scheduled Tribe. It must be stated here itself that the High Court did not go into the correctness of the findings of fact recorded by these two authorities in negativing the claim of the respondent no. 1. It proceeded to hold in favour of the respondent no. 1 on other grounds to which we will refer hereafter. Even otherwise, looking to the evidence placed on record and the detailed reasons given by the respondents 6 and 5 in their orders, it is not possible to say that the orders passed by them were not based on evidence or they were unsustainable for any reason. Merely because a school certificate has to be taken as valid as stated in a circular by the State Government, it was not conclusive in the light of clinching and telling evidence against the claim of the respondent no. 1 and in view of the circulars / instructions issued by the Central Govt. and other circulars of the State Govt. holding the field.

The High Court to support its view that 'Halba-Koshti' is included in 'Halba' or 'Halbi' Tribe relied on the following decisions of High Courts - (1) Sonabai vs. Lakhmibai (1956 NLJ 725) (decided by the Division Bench of erstwhile Nagpur High Court); (2) Madhukar Dekate vs. Dean of the Medical College, Nagpur (Letter Patent Appeal No. 157/1955, decided on 4th August, 1957 by a Division Bench of Madhya Pradesh High Court; (3) Sunit Nana Umredkar vs. Dr. V.G. Ranade (Writ Petition No. 2404 of

1980, decided on 24th September, 1980 by a Division Bench of Bombay High Court); (4) Prabodh Parhate vs. The State of Madhya Pradesh and Ors. (Writ Petition No. 1450 of 1981 decided on 21st January, 1982 by Division Bench of Madhya Pradesh High Court; (5) Abhay Parate vs. State of Maharashtra, (1984 Mah. L.J. 289 - a decision of the Division Bench of the Bombay High Court); (6) Ku. Kalpana Bhishikar vs. Director of Social Welfare (Writ Petition NO. 95 of 1985, decided on 14th February, 1985 by Division Bench of Bombay High Court). In paragraph 16 of the impugned judgment, the High Court has stated thus:-

"It is submitted on behalf of the petitioners that these decisions rendered during a long span of over 34 years by different Benches of different High Courts consistently holding that "Halba Koshti is "Halba" must have or in any case reasonably supposed to have affected the course of life of a large portion of the community and now taking a different view, would lead to uncertainty and chaos and hence we should desist from making a departure. We see considerable force in the submission specially in the background of the undisputed position that even the Government recognized "Halba Koshtis" as "Halba" for a long period of nearly ten years between 1967 to 1977 by issuing circulars/instructions from time to time."

The High Court applied the doctrine of stare decisis on the grounds that the decisions referred to above were considered judgments; even Government accepted their correctness in the courts; the State Government independently took the same view after repeated deliberations for number of years; taking a contrary view would lead to chaos, absurd contradictions resulting in great public mischief. In our view, the High Court was again wrong in this regard. The learned senior counsel for the respondent no. 1 was not in a position to support this reasoning of the High Court and rightly so in our opinion. In the decisions listed above except the first two decisions, all other decisions were rendered subsequent to two Constitution Bench judgments (supra) of this Court. The first two judgments were delivered in 1956 and 1957. In this view, the High Court was not right in stating that the decisions were rendered during a long span of over 34 years by different benches of different High Courts, consistently holding that 'Halba-Koshti' is 'Halba'. The rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex-facie illegal more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this Court, that too concerning the interpretation of the provisions of the Constitution. The remaining decisions were contrary to the law laid down by this Court. This Court in Maktul vs. Manbhari & Ors. (1959 SCR 1099) adopting the statement of law found in Halsbury and Corpus Juris Secundum observed thus:-

"But the Supreme appellate court will not shirk from overruling a decision, or series of a decisions, which establish a doctrine plainty outside the statue and outside the common law, when no title and no contract will be shaken, no persons can complain and no general course of dealing to be altered by the remedy of a mistake." (From

> Halsbury). "Because decisions should not be followed to the extent that grievous wrong may result and accordingly the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result"

(From Corpus Juris Secondum) The decisions relied on by the High Court to apply the doctrine of stare decisis, firstly, were not holding the field for long time. Secondly, they are evidently contrary to the constitutional provisions. Thirdly, all the decisions rendered by the High Courts after 1965 were not consistent with the law laid down by this Court. Fourthly, if the view of the High Court is accepted, it will lead to absurd, unjust and ex-facie illegal results running contrary to Articles 341 and 342 of the Constitution. Fifthly, this Court in State of Maharashtra vs. Abhay and Ors. (AIR 1985 SC 328) specifically had kept open the larger question whether 'Halba-Koshti' is Halba. The High Court in the impugned judgment refers to this decision but only states that the said judgment shall govern the petitioner only. Sixthly, all the said decisions were not directly on the point relating to Scheduled Tribes Order issued under Article 342 of the Constitution; some of the cases arose out of civil disputes involving adoption. Seventhly, even the State Government was not consistent in its stand touching the issue whether 'Halba-Koshtis' were 'Halba'/'Halbis' to consider them as Scheduled Tribes. As early as on 20.7.1962 itself a circular was issued to the effect that 'Halba-Koshtis' were not Scheduled Tribes. Further a look at the various circulars / resolutions/instructions/orders referred to in paragraphs 20 to 22 of the impugned judgment, makes it clear that the controversy was not settled. Hence it cannot be said that the view 'Halba-Koshti' was 'Halba'/'Halbi' Scheduled Tribe was holding the field for long time. There arose no question of unsettling or upsetting the position in law which itself was not a settled one, till first Constitution judgment in Basavalingappa case was delivered by this Court. Per contra, the impugned judgment runs contrary to the law clearly settled by various judgments of this Court.

Thus, the High Court was not right in invoking and applying the doctrine of stare decisis on the facts and in the circumstances of the case.

The High Court in paragraphs 20 to 23 dealt with circulars/resolutions/instructions/orders made by the Government from time to time on the issue of 'Halba-Koshtis'. It is stated in the said judgment that up to 20.7.1962 'Halba-Koshtis' were treated as 'Halbas' in the specified areas of Vidarbha. Government of Maharashtra, Education and Social Welfare Department issued Circular No. CBC 1462/3073/M to the effect that 'Halba-Koshtis' were not Scheduled Tribes and they are different from 'Halba'/'Halbis'. In the said circular it is also stated that certain persons not belonging to 'Halba' Tribe have been taking undue advantage and that the authorities competent to issue Caste Certificates should take particular care to see that no person belonging to 'Halba-Koshtis' or 'Koshti' community is given a certificate declaring him as member of Scheduled Tribes. On 22.8.1967 the above-mentioned circular of 20.7.1962 was withdrawn. Strangely, on 27.9.1967, another circular No. CBC- 1466/9183/M was issued showing the intention to treat 'Halba- Koshti' as 'Halba'. On 30.5.1968 by letter No. CBC-1468-2027-O, the State Government

informed the Deputy Secretary to the Lok Sabha that 'Halba-Koshti' is 'Halba'/'Halbi' and it should be specifically included in the proposed Amendment Act. Government of Maharashtra on 29.7.1968 by letter No. EBC-1060/49321-J-76325 informed the Commissioner for Scheduled Castes and Scheduled Tribes that 'Halba-Koshti' community has been shown included in the list of Scheduled Tribes in the State and the students belonging to that community were eligible for Government of India Post Matric Scholarships. On 1.1.1969 Director of Social Welfare, Tribal Research Institute, Pune, by his letter No. TRI/I/H.K./68-69 stated that the State Government could not in law amend the Scheduled Tribe Order and that a tribe not specifically included, could not be treated as Scheduled Tribe. In this view the Director sought for clarification. The Government of India on 21.4.1969 wrote to the State Government that in view of Basavalingappa's case (supra) 'Halba-Koshti' community could be treated as Scheduled Tribe only if it is added to the list as a sub-tribe in the Scheduled Tribes Order and not otherwise. Thereafter few more circulars were issued by the State Government between 24.10.1969 and 6.11.1974 to recognize 'Halba-Koshtis' as 'Halbas' and indicated as to who were the authorities competent to issue certificates and the guidelines were given for enquiry. There was again departure in the policy of the State Government by writing a confidential letter No. CBC- 1076/1314/Desk-V dated 18.1.1977. Government informed the District Magistrate, Nagpur, that 'Halba-Koshtis' should not be issued 'Halba' Caste Certificate. Thereafter, few more circulars, referred to in paragraph 22 of the judgment, were issued. It may not be necessary to refer to those again except to the circular dated 31.7.1981 bearing No. CBC-1481/(703)/D.V. by which the Government directed that until further orders insofar as 'Halbas' are concerned, the school leaving certificate should be accepted as valid for the purpose of the caste. Vide Resolution dated 23.1.1985 a new Scrutiny Committee was appointed for verification of castes certificates of Scheduled Tribes. The High Court had observed in paragraph 23 of the judgment that several circulars issued earlier were withdrawn but the said circular dated 31.7.1981 was not withdrawn. For the first time on 8.3.1985 the Scrutiny Committee was authorized to hold enquiry if there was any reason to believe that the certificate was manipulated or fabricated or had been obtained by producing insufficient evidence. Referring to these circulars/resolutions the High Court took the view that the caste certificate issued to the respondent no. 1 could be considered as valid and upto 8.3.1985 the enquiry was governed by circular dated 31.7.1981. The High Court dealing with the stand of the State Government on the issue of 'Halba-Koshti', from time to time, and also referring to circulars/ resolutions/instructions held in favour of the respondent no. 1 on the ground that the appellant was bound by its own circulars/orders. No doubt, it is true, the stand of the appellant as to the controversy relating to 'Halba-Koshti' has been varying from time to time but in the view we have taken on question no. 1, the circulars /resolutions /instructions issued by the State Government from time to time, some time contrary to the instructions issued by the Central Government, are of no consequence. They could be simply ignored as the State Government had neither authority nor competency to amend or alter the Scheduled Tribes Order. It appears taking note of false and frivolous claims being made by persons not entitled to claim such status, the Government of India addressed letters and issued instructions between the period from 21.4.1969 to 1982 to impress that there should be strict enquiry before issuance of caste certificates to persons claiming Scheduled Caste / Scheduled Tribe status; strict scrutiny into the caste of the parent should be effected as a check-point. The State Government issued Resolution dated 29.10.1980 in consonance with the instructions given by the Central Government laying down the guidelines on which the enquiry should be held before issue of Caste Certificate. Another Resolution dated

24.2.1981 was also issued for appointing a scrutiny committee to verify whether the Caste Certificate has been issued to person who is really entitled to it in view of the complaints of misuse of reservational benefits on a large scale. These Resolutions were operative as they had not been repealed. This Court in its judgment dated 19.10.1984 State of Maharashtra vs. Abhay & Ors [AIR 1985 SC 328] directed that the State of Maharashtra should devise and frame a more rational method for obtaining much in advance a certificate on the strength of which a reserved seat is claimed. But the High Court committed an error in interpreting the scope of the Circular dated 31.7.1981 that the School Leaving Certificate was conclusive of the caste. This interpretation was plainly inconsistent with the instructions and resolutions stated above. Further it may be also noticed here that the Joint Parliamentary Committee did not make any recommendation to include 'Halba-Koshti' in the Scheduled Tribes Order. At any rate the Scheduled Tribes Order must be read as it is until it is amended under clause (2) of Article 342. In this view also, the circulars/ resolutions /instructions will not help the respondent no. 1 in any way. Even otherwise, as already stated above, on facts found and established the authorities have rejected the claim of the respondent no. 1 as to the Caste Certificate. The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record. The jurisdiction of the High Court would be much more restricted while dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that respondent no. 1 belong to 'Koshti' caste and has no identity with the 'Halba/Halbi', which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the conclusion that 'Koshtis' could be treated as 'Halbas'. In this view the High Court could not upset the finding of fact in exercise of its writ jurisdiction. Hence, we have to essentially answer the question no. 2 also in the negative. Hence it is answered accordingly.

The arguments advanced before the High Court on behalf of an intervener relying on Articles 162, 256 to 258 and 339(2) of the Constitution of India that instructions issued by the Central Government in the matter have overriding effect over the instructions issued by the State Government, was lightly brushed aside on the ground that this aspect assured little importance in the view taken by the High Court that the State Government was bound by the circulars issued by it. We have already expressed above the view in the light of Articles 341 and 342 of the Constitution that a Scheduled Tribes Order can be amended only by the Parliament. Hence it is not possible to accept that orders/circulars issued by the State Government, which have the effect of amending Scheduled Tribes Order, were binding on the Government or other affected parties.

In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

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 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.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda vs. Anirudh Patar & others (1971 (1) SCR

804) and Dina vs. 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.

Having regard to all aspects and for the reasons stated above, this appeal merits acceptance. Hence, it is allowed. The impugned judgment and order of the High Court are set aside.

Respondent no. 1 joined the medical course for the year 1985- 86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to respondent no. 1. If any action is taken against respondent no. 1, it may lead depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment.

No costs.