

State Of Maharashtra & Ors vs Mana Adim Jamat Mandal on 8 March, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3446, 2006 (4) SCC 98, 2006 AIR SCW 1529, 2006 (3) AIR BOM R 310, (2006) 3 SUPREME 28, (2006) 3 SCALE 169, (2006) 41 ALLINDCAS 820 (SC), (2006) 5 ALL WC 5249, (2006) 2 KER LT 724, (2006) 3 MAH LJ 407, (2006) 2 PAT LJR 313, (2006) 2 SCT 204, (2006) 3 SCJ 791, (2006) 3 ALLMR 230 (SC), (2006) 4 BOM CR 299

Author: H.K.Sema

Bench: H.K. Sema, Ar Lakshmanan

CASE NO.:
Appeal (civil) 5270 of 2004

PETITIONER:
State of Maharashtra & Ors

RESPONDENT:
Mana Adim Jamat Mandal

DATE OF JUDGMENT: 08/03/2006

BENCH:
H.K. SEMA & Dr. AR LAKSHMANAN

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL NO. 6480 OF 2005 H.K.SEMA,J.

CIVIL APPEAL NO. 5270 OF 2004 What appears to be a perpetual controversy with regard to Scheduled Tribe status has again engaged the attention of this Court for a considerable time. Two questions are raised before us:

1. Whether the 'Mana' community in the State of Maharashtra is a Sub-Tribe of "Gond" and is a Scheduled Tribe or not?
2. Whether a two Judge Bench decision of this Court in Dina v. Narayan Singh 38 ELR 212 (for the sake of brevity 'Dina I') and the decision rendered by another two Judge Bench of this Court in Dadaji alias Dina v. Sukhdeobabu & Ors. (1980) 1 SCC 621 (for the sake of brevity 'Dina II') are over-ruled by a Constitution Bench of this Court in State of Maharashtra v. Milind Katware (2001) 1 SCC 4?

The questions raised before us being the questions of law, it is not necessary for us to recite the entire facts. Clause 25 of the Article 366 of the Constitution of India defines "Scheduled Tribes" as under:

"Scheduled Tribes" means such tribes or tribal communities as parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;"

Article 342 of the Constitution of India deals with Scheduled Tribes. It says:

"342. Scheduled Tribes. (1) The President may with respect to any State or Union territory, and where it is 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."

The President by public notification issued the Constitution (Scheduled Tribes) Order, 1950, in exercise of the powers conferred by clause (1) of Article 342 of the Constitution. By clause 2 of that Order it was provided that the tribes or tribal communities, or parts of it, or groups, within tribes or tribal communities, specified in Parts I to XII of the Schedule to the Order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule. The Order is followed by a Schedule constituting of twelve Parts. Part VII-A of the Schedule as amended by Act II of 1960 relates to Maharashtra. By item 5 it is specified that in (1) Melghat tehsil of Amravati District (2) Godchiroli and Sironcha tehsils of the Chanda district (3) Kalapur, Wani and Yeotmal tehsils of the Yeotmal district 32 tribes or tribal communities shall be deemed Scheduled Tribes. Entry 12 as originally set out in the Order promulgated by the President of India reads: "Gond" including Media, ("Maria" and Mudia (Murai)). By the Scheduled Castes and Scheduled Tribes (Amendment) Act, 63 of 1956, Entry 12 was substituted by:

"12. Gond, including Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koliabhuta or Koilabhuti, Bhar, Bisonborn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa Dhoba, Dhulia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Kirwar or Khirwara, Kucha Maria, Kuchaki Maria, Media (Maria), Mana, Mannower, Mohya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thantia or Thotye, Wade Maria or Vade Maria."

(emphasis supplied) Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 was passed by the Parliament. The Preamble of the Act states:

"An Act to provide for the inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the re-adjustment of representation of parliamentary and assembly constituencies in so far as such re-adjustment is necessitated by such inclusion or exclusion and for matters connected therewith."

By the aforesaid Act, the entire Schedule to the Order as it stood prior to the amendment was substituted by a new Schedule consisting of XVI Parts. Part IX of the Schedule relates to the State of Maharashtra. Entry 18 of Part IX of the Schedule to the Order after amendment reads thus:

"18. Gond, Rajgond, Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koliabhuta, Koilabhuti, Bhar, Bisonborn Maria, Chota Maria, Dandami Maria Dhuru, Dhurwa, Dhoba, Dhulia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kendra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghnya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia Thotya, Wade Maria or Vade Maria."

(emphasis supplied) The Government of Maharashtra by resolutions dated 24.4.1985 and 19.6.1985 directed that the members of 'Mana' community be not treated as Scheduled Tribes unless they establish relationship or affinity with the 'Gond' Tribe. By another resolution dated 15.6.1995, the State of Maharashtra declared 'Mana' community as Special Backward Class. These resolutions were challenged as unconstitutional before the High Court by filing Writ Petition No. 959 of 2002. The High Court, after referring to the various decisions of this Court, quashed the aforesaid resolutions. Hence, the present appeal. It is now well settled principle of law that no authority, other than the Parliament by law, can amend the Presidential Orders. Neither the State Governments nor the Courts nor the Tribunals nor any authority can assume jurisdiction to hold inquiry 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 inquiry 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 or exclude a particular Caste or Tribe or group of Castes or Tribes when they are expressly included. Mr. S.K. Dholakia, learned senior counsel appearing on behalf of the appellant strenuously contended that the facts of the case at hand are squarely covered by the decision of this Court rendered in the case of Dina II (supra). He further contended that the decision rendered by this Court in Dina II (supra) has not been over-ruled by a Constitution Bench of this Court in State of Maharashtra v. Milind Katware (2001) 1 SCC 4.

Per contra, Mr. P.P. Rao, learned Senior counsel contended that the decision of this Court in Dina II (supra) was over-ruled by the Constitution Bench of this Court in Milind Katware's case (supra) by necessary implication. The Constitution Bench of this Court in Milind Katware's case (supra), after taking into consideration all the judgments, arrived at the conclusion at para 36 page 30 SCC as under:

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

1. It is not at all permissible to hold any inquiry 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 entry concerned 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 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 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 v. Anirudh Patar and Dina v. Narain Singh did not lay down law correctly in stating that the inquiry 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 inquiry at all is permissible and no evidence can be let in, in the matter."

(emphasis supplied) The concluding part of the order would show that Dina I case was expressly over-ruled.

In the case of Dina I (supra), this Court on appreciation of evidence on record came to the conclusion that 'Mana' is a sub-tribe of Gonds. The Court further held as under:

"If on the evidence it is established that there is no sub-tribe of Manas amongst the Gonds, the argument would have force. But on the record there is evidence which

supports the case of the first respondent that there is sub-tribe of Manas amongst the Gonds, and the High Court has accepted that evidence."

It is because of this reason, this Court expressly over-ruled Dina I case holding that no inquiry is permissible and no evidence can be let in the matter.

We will now examine as to whether the decision rendered by this Court in Dina II case (supra) was over-ruled by the Constitution Bench of this Court in Milind Katware's case (supra) by necessary implication.

In Dina II case, the two-Judge Bench of this Court, after examining the evidence on record, held in paragraphs 16 and 17 as under:

"16. We are, therefore, of the view that the 'Mana' community included in Entry 18 can only be that which has affinity with 'Gonds' and any other community which also bears the name 'Mana' but does not have any such affinity cannot be deemed to fall within the scope of 'Mana' in Entry 18.

17. The appellant has categorically admitted in the course of his evidence that there was no connection between his community and Gonds. His evidence is, "we have no concern with the Gond community also. The customs and traditions with regard to marriage of our community are different from those of the Gonds". He has stated in his deposition that "I have no concern whatsoever with Gonds. There are sub-castes amongst Gonds. Some of them are Arak, Gowari, Raj Gond, Bada Magia, Madia, Ojha and Wanjari. It is not true that Mana is a sub-caste of the Gonds. There is no community known as 'Gond'" That the appellant was a member of the 'Mana' community which has the qualification of 'Kshatriya' is established by his admission in his deposition that he was a member of the Kshatriya Mana Shikshana Sahayyak Mandal, Chandrapur. Although in another part of his statement of objections there are contradictory statements, the following plea in para 9 of the said statement makes it obvious that there is a community called Kshatriya Bidwaik Mana Community:

9. As to para 11: - It is admitted that the respondent 1 was the Vice-President for some time and also an active worker of the Kshatriya Bidwaik Mana Shikshana Samstha. The object of the said institution was not limited to spread education amongst the boys belonging to Kshatriya Bidwaik Mana community, and it is denied that the said society has been founded in order to give educational facilities to the students belonging to this community only.

In paragraph 18, Dina II, this Court relied on the decision in Dina I (supra) and bodily lifted the observations in Dina I, extracted below:

"18. In the appeal filed by the appellant where the question was whether he belonged to a Scheduled Tribe or not, this Court observed:

That there are sub-tribes amongst the Gonds is not denied. Names of some of those sub-tribes are included in Entry 12 of Item 5 of Part VII-A of the Schedule is also a matter which is beyond dispute. The customs, manners, form of worship, and dress of the members of the Maratha Mana community are all different from the customs, manners, form of worship and dress of the Gonds. No rational explanation has been suggested why the Parliament should have, while including under Entry 12 several sub-tribes of Gonds, specified Mana under that entry, if Manas had no affinity at all with Gonds. The appellant was uncertain about the claim that he was making. In the nomination paper filed by him he claimed to be a Gond (Mana). His subsequent explanation that he did so because the rules so required cannot be accepted as true. He relied upon the status of a Mana in the belief that all Manas were intended to be given the benefit of the privileges conferred by the Scheduled Tribes Order. He described himself as a Gond (Mana). Realising thereafter that his community had no affinity with the Gonds he stated that he was not a Gond; that he had nothing to do with the Gonds, and that his community had also nothing to do with the Gonds. He rested his claim solely upon the description in Entry 12 in Item 5 of Part VII-A of the Schedule. But the form in which the entry is made *prima facie* indicates that in view of the legislature, Mana was a sub-tribe of Gonds and a Mana who was a member of the sub-tribe of Gonds alone was entitled to the privileges conferred by the Schedule to the Scheduled Tribes Order.

We, therefore, agree with the High Court that the appellant, merely, because he belonged to the Mana Community amongst the Marathas, is not eligible to stand as a candidate for election to the Maharashtra Legislative Assembly from the reserved seat of the Armori constituency in Gadchiroli tahsil of Chanda District."

As noticed above, a Constitution Bench of this Court in Milind Katware's case (*supra*) has over-ruled the decision in Dina I, which was based on appreciation of evidence on record. In Dina II, not only the observations made in Dina I were bodily lifted in paragraph 18, in paragraph 17, as quoted above, the evidence on record was considered in arriving at the conclusion, which is not permissible. We are, therefore, in agreement with the view of the High Court that the decision in Dina II is over-ruled by the Constitution Bench in Milind Katware's case (*supra*) by necessary implication. The contention of Mr. Rao is sustained. A three-Judge Bench of this Court in C.N. Rudramurthy v. K. Barkathulla Khan and Ors. (1998) 8 SCC 275 has examined the nature and effect of over-ruling by necessary implication and held that when the law as declared by the Supreme Court contradicts what has been stated in another case, that case stood impliedly overruled. Admittedly Dina II reached its conclusion after examining the evidence on record of Dina I. As pointed out earlier, this is not permissible in view of the law declared by the Constitution Bench of this Court in Milind Katware's case (*supra*). The same view was reiterated in the case of Union of India & Ors. v. Raj Rani and Ors. (1998) 8 SCC 704. In that case the payment of solatium and interest has been settled by a three-Judge Bench in Union of India v. Hari Krishan Khosla 1993 Supp (2) SCC 149, which held that the

respondents were not entitled to the payment of interest and solatium. A contrary view of a two-Judge Bench decision in Rao Narain Singh v. Union of India (1993) 3 SCC 60 was brought to the notice of this Court and this Court held that in view of the three-Judge Bench decision in Hari Krishan Khosla case, the ratio of Rao Narain Singh case is no longer a good law.

Reverting to the facts of the case in hand, the Parliament by law amended the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (No. 108 of 1976). Section 4 of the Amendment Act reads as under:

"4. Amendment of Scheduled Tribes Orders. The Scheduled Tribes Orders are hereby amended in the manner and to the extent specified in the Second Schedule."

Part IX of the Second Schedule deals with the State of Maharashtra. Entry 18 of the Second Schedule reads:

18. Gond, Rajgond, Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koliabhuta, Koilabhuti, Bhar, Bisonborn Maria, Chota Maria, Dandami Maria Dhuru, Dhurwa, Dhoba, Dhulia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kendra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghnya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia Thotya, Wade Maria or Vade Maria."

(emphasis supplied) The Constitution (Scheduled Tribe) Order 1950, in relation to the State of Maharashtra, did not specify 'Mana'. It will be noticed that in the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1956 (Act No. 63 of 1956), Entry 12 was substituted by:

"12. Gond, including Arakh or Arrakh, Agaria, Asur, Badi, Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koliabhuta or Koilabhuti, Bhar, Bisonborn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa Dhoba, Dhulia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Kirwar or Khirwara, Kucha Maria, Kuchaki Maria, Media (Maria), Mana, Mannower, Mohya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thantia or Thotye, Wade Maria or Vade Maria."

(emphasis supplied) As noticed above, in entry 18 of the Second Schedule of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the word 'including' was expressly deleted.

Mr. P.P. Rao, learned Senior counsel referred to various entries in the Second Schedule of the Act to show the intendment of the Parliament to introduce the Amendment Act, 1976.

A quick survey of the Presidential order of the entries in the Second Schedule of the Act shows that wherever the Parliament wanted to restrict the scope of an entry with reference to certain areas or

with reference to language or to include certain tribes in a group, it has done so expressly. It is also noticed that in the Second Schedule not only there are many entries mentioning a single community or tribe individually but also quite a few entries mentioning a group of communities or tribes. A few examples are:

PART I. - Andhra Pradesh In Sl. No. 7 Goudu (in the Agency tracts) And Sl. No. 20. Malis (excluding Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak Nalgonda, Nizamabad and Warangal districts).

Sl.No. 23 Nayaks (in the Agency tracts) Sl.No. 30 Thoti (in Adilabad, Hyderabad, Karimnagar, Khammam, Mahbubnagar, Medak, Nalgonda, Nizamabad and Warangal districts).

Sl. No. 31 Valmiki (in the Agency tracts) Group entries are provided at Sl. No. 6, 16, 17, 18, 22, 25 and 28.

PART II. Assam Group entries at Sl.No. 7 Any Kuki Tribes. Including:-

(i) Biate, Biete

(ii) Changsan

(iii) Chongloi

(iv) Dounghel

(v) Gamalhou

(vi) Gangte

(vii) Guite

(viii) Hanneng

(ix) Haokip, Hauptit

(x) Haolai

(xi) Hengna

(xii) Hongsungh

(xiii) Hrangkhwal, Rangkhoh

(xiv) Jongbe

(xv) Khawchung (xvi) Khawathlang, Khothalong (xvii) Kherma (xviii) Kholhou (xix) Kipgen (xx) Kuki (xxi) Lengthang (xxii) Lhangum (xxiii) Lhoujem (xxiv) Lhouvun (xxv) Lumpheng (xxvi) Mangjel (xxvii) Misao (xxviii) Rieng (xxix) Sairhem (xxx) Selnam (xxxi) Singson (xxxii) Sitlhou (xxxiii) Sukte (xxxiv) Thado (xxxv) Thangngeu (xxxvi) Uibuh (xxxvii) Vaiphei Restricted Entries : Entry 9, Man (Tai speaking.) PART IV Gujarat Restricted entries 5,6,7, 15, 17, 20, 21, 24, 26 and PART VIII Madhya Pradesh Restricted entries 21, 32, 36 and 39 PART IX Maharashtra Chodhara (excluding Akola, Amravati, Bhandara, Buldana, Chandrapur, Nagpur, Wardha, Yavatmal, Aurangabad, Bhir Nanded, Osmanabad and Parbhani districts).

Thoti (in Aurangabad, Bhir, Nanded, Osmanabad and Parbhani districts and Rajura tahsil of Chandrapur district) Group entries 8, 18, 21, 22, 32, 33, 35, 38, and 44 The common pattern found in most of the group entries is that there is a punctuation mark comma (,) between one Entry and another Entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. In the present case, Entry 18 of the Schedule clearly signifies that each of the Tribe mentioned therein deemed to be a separate Tribe by itself and not a sub-Tribe of 'Gond'. 'Gond' is a Scheduled Tribe, it is not disputed. As already noticed that 'Gond' including Arakh or Arrakh etc. found in Entry 12 of Amendment Act 63 of 1956 has been done away with by the Amendment Act of 1976. In Entry 18 of Second Schedule of Amendment Act of 1976 the word 'including' was deliberately omitted, which signifies that each one of the Tribe specifying in Entry 18 is deemed to be a separate Tribe by itself. Therefore, "Mana" is not a sub-Tribe of "Gond" but a separate Tribe by itself and is a Scheduled Tribe. In the view that we have taken, we do not see any infirmity in the order passed by the Division Bench of the Bombay High Court, which would warrant interference by this Court. This appeal being devoid of merits is, accordingly, dismissed. Parties are asked to bear their own costs. CIVIL APPEAL NO. 6480 OF 2005 For the reasons stated in Civil Appeal No. 5270 of 2004, this appeal is also dismissed. Parties are asked to bear their own costs.