

Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna

v.

The State of Bihar & Ors.

(Civil Appeal No.18802 of 2017)

15 July 2024

[Vikram Nath* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Matter pertains to the correctness of the Resolution passed by the State Government based upon the recommendations by the State Backward Commission that in the list of Extremely Backward Classes, the “Tanti-Tantwa” caste be merged in the Scheduled Castes list with the caste ‘Pan/Sawasi’ mentioned at Serial No. Entry 20 so that they could get benefits of the Scheduled Castes.

Headnotes[†]

Constitution of India – Art. 341 – Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 – Scheduled Castes list – Merging of caste “Tanti-Tantwa” with the caste ‘Pan/Sawasi’ – Resolution passed by the State Government based upon the recommendations by the State Backward Commission – In the list of Extremely Backward Classes, the “Tanti-Tantwa” caste be merged in the Scheduled Castes list with the caste ‘Pan/Sawasi’ mentioned at Serial No. Entry 20 so that they could get benefits of the Scheduled Castes – Legality:

Held: Resolution dated 01.07.2015 is illegal, erroneous as the State Government had no competence/authority/power to tinker with the lists of Scheduled Castes published u/Art. 341 – State may be justified in deleting “Tanti-Tantwa” from the Extremely Backward Classes list on the recommendation of the State Backward Commission, but to merge “Tanti-Tantwa” with ‘Pan, Sawasi, Panr’ under Entry 20 of the list of Scheduled Castes was a mala fide exercise – Whether synonymous or not, any inclusion or exclusion of any caste, race or tribe or part of or group within the castes, races or tribes has to be, by law made by the Parliament, and not by any other mode or manner – Whether or not to include or

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exclude any caste in the list of Extremely Backward Class would be within the domain of the Commission – The Commission would have no jurisdiction to make recommendation with respect to any caste being included in the Scheduled Castes lists and, even if it makes such a recommendation, right or wrong, the State has no authority to proceed to implement the same when it was fully aware that the Constitution does not permit it to do so – Provisions of Art. 341 sub-clause 1 and 2 are very clear and discrete – There is no ambiguity or vagueness otherwise requiring any interpretation other than what is mentioned therein – State of Bihar tried to read something in order to suit its own ends for whatever reason – Thus, the High Court erred in upholding the said Notification – Impugned Resolution dated 01.07.2015 is quashed – As regards protecting those Members of “Tanti-Tantwa” community who were extended benefit of Scheduled Castes pursuant to the Resolution, the action of the State is found to be mala fide and de hors the constitutional provisions – State cannot be pardoned for the mischief done by it – Any person not deserving and not covered by such list if extended such benefit for deliberate and mischievous reasons by the State, cannot take away the benefit of the members of the Scheduled Castes – Such appointments would under law on the findings recorded would be liable to be set aside – However, fault is of the State and not of any individual member of the “Tanti-Tantwa” community – As such issuance of direction that such posts of the Scheduled Castes Quota which had been filled up by members of “Tanti-Tantwa” community availing benefit on the basis of Resolution may be returned to the Scheduled Castes category and such candidates of “Tanti-Tantwa” community be accommodated by the State in their original category of Extremely Backward Classes.

[Paras 36-39, 41, 42]

Case Law Cited

State of Maharashtra v. Keshao Vishwanath Sonone [\[2020\] 11 SCR 597](#) : (2021) 13 SCC 336 – referred to.

List of Acts

Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991; Constitution of India; Constitution (Scheduled Castes) Order, 1950; Scheduled Castes and Scheduled Tribes Orders

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(Amendment) Act, 1956; Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967; Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976; Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002; Bihar State Commission for Backward Classes Act, 1993.

List of Keywords

Scheduled Castes list; “Tanti-Tantwa” caste; ‘Pan/Sawasi’ caste; Merging of caste “Tanti-Tantwa” with the caste ‘Pan/Sawasi’; State Backward Commission; Extremely Backward Classes; Benefits of the Scheduled Castes; Resolution dated 01.07.2015; Mala fide exercise; Art. 341 of the Constitution.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.18802 of 2017

From the Judgment and Order dated 03.04.2017 of the High Court of Judicature at Patna in CWJC No.12403 of 2015

With

Civil Appeal No. 7793 of 2024

Appearances for Parties

Ms. Indira Jaising, Sr. Adv., Deepak Jain, K.B. Pradeep, Jaspreet Aulakh, Ms. Anoushka Singh, Ms. Dashampreet Kaur, Vaibhav Manu Srivastava, Ms. Twinkle Gupta, Advs. for the Appellant.

Mrs. Aishwarya Bhati, A.S.G., Ranjit Kumar, Rakesh Dwivedi, Rakesh Khanna, V. Giri, Salman Khurshid, Sr. Advs., Manish Kumar, Suyash Vyas, Animesh Kumar, Neeraj Shekhar, Nishant Kumar, Ms. Aprajita, Ayush Kumar, Amrendra Singh, Ram Bachan Choudhary, Mrs. Kshama Sharma, Kartik Kumar, Navin Prakash, Rahul Narang, Rao Vishwaja, Harshed Sundar, Nihar Dharmadhikari, Ram Shankar Das, Ms. Lubna Naaz, Zafar Khurshid, Amit Singh Chauhan, Mohit Kocchhar, Rajat Nair, Mrs. Swati Ghildiyal, Mrs. Shivika Mehra, Mrs. Shagun Thakur, Mrs. Satvika Thakur, Mrs. Prabhati Nayak, Amrishi Kumar, B S Rajesh Agrajit, Shyamal Kumar, Rakesh Kumar, Ms. Sukhdeep Kaur, Bitu Kumar Singh, Ms. Jyoti Rana, Satya Veer Singh, Ms. Priya Nagar, Mrs. Meetu Goswami, Siddharth Goswami, Vinay Kumar Ojha, Ms. Raj Bala, Ranjan Nikhil Dharnidhar, Anilendra Pandey, Ms. Priya Kashyap, Rajeev Kumar Ranjan, C. P. Singh, Advs. for the Respondents.

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Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. Application(s) for intervention/impleadment is/are allowed.
2. Leave granted in SLP (CIVIL) No. 18294 of 2021.
3. These two appeals assail the correctness of the judgment and order dated 3rd April, 2017 passed by the Division Bench of the Patna High Court whereby a group of four (4) writ petitions and one Letters Patent Appeal were decided by a common judgment dismissing all the five cases. The challenge in the writ petitions and the appeal before the Division Bench of the High Court was to a Notification dated 1st July, 2015, whereby the State Government had passed a resolution based upon consideration of recommendations by the State Backward Commission which had recommended that in the list of Extremely Backward Classes published under the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991, the caste “**Tanti-Tantwa**” recorded at Serial No.33 be deleted and the said “**Tanti-Tantwa**” be merged in the Scheduled Castes list with the caste ‘**Pan/Sawasi**’ mentioned at Serial No.20 so that they could get benefit of the Scheduled Castes. The operative part of the Resolution as contained in the aforesaid Notification dated 01.07.2015 is reproduced hereunder in the original Hindi language:

“अतः राज्य सरकार ने भली-भांति विचारोपरांत निर्णय लिया है कि पिछडे वर्गों के लिए राज्य आयोग की उपर्युक्त सलाह के आलोक में विहार पदों एवं सेवाओं की रिक्तियों में आरक्षण (अनुसूचित जातियों, अनुसूचित जनजातियों एवं अन्य पिछडे वर्गों के लिए) अधिनियम 1991 की अत्यंत पिछडे वर्गों की सूची (अनुसूची-1) के क्रमांक-33 पर दर्ज “तांती (तत्वा)” जाति को विलोपित कर दिया जाए ताकि तांती (तत्वा) को अनुसूचित जाति की सूची में क्रमांक-20 पर दर्ज पान/स्वासी के साथ समावेशन पर अनुसूचित जाति का लाभ मिल सके।”

4. The challenge in the writ petitions and the LPA before the Division Bench was to the second part of the said Resolution quoted above whereby “**Tanti-Tantwa**” caste was sought to be merged with Entry-20 of the Scheduled Castes list namely, the caste of ‘**Pan/Sawasi**’ and to extend all benefits of the Scheduled Castes.

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5. The challenge was mainly on the ground that the State Government had no competence/authority/power to add a caste or sub-caste to any entry in the Scheduled Castes list notified under the Presidential Order under Article 341 of the Constitution of India. Once the list under the Presidential Order is published, thereafter, any amendment, addition, deletion or modification to the said list can be made only by law enacted by Parliament and not otherwise. Before the High Court, the respondent-State of Bihar as also other private respondents took up a plea that the impugned Notification dated 01.07.2015 does not meddle with the Presidential Order and the list published thereunder but, in fact, it was only that "**Tanti-Tantwa**" were one and the same as '**Pan/Sawasi**' except that they had the special title within the caste of '**Pan/Sawasi**' and were being referred to as "**Tanti-Tantwa**" in the State of Bihar and, therefore, it was not a case of alteration of the list but only of clarification. It was also submitted by the respondents before the High Court that the State Government was bound by the recommendations made by the State Backward Commission and had, therefore, rightly deleted "**Tanti-Tantwa**" from the list of Extremely Backward Classes and merged with the Entry-20 of '**Pan/Sawasi**' in the list of Scheduled Castes published in 1976.
6. The High Court accepted the submissions of the respondents, as noted above and, accordingly, dismissed the writ petitions as also the LPA, filed by the appellants vide impugned judgment dated 03.04.2017.
7. It is this order of the High Court dated 3rd April, 2017 which is under challenge in the present two appeals.
8. We have heard Smt. Indira Jai Singh, learned Senior Counsel appearing for the appellants in both the appeals, Sri Ranjeet Kumar, learned Senior Counsel for the respondent-State of Bihar, Sri Salman Khurshid, Sri Rakesh Dwivedi and Sri V. Giri, learned Senior Counsel for the intervenors and Ms. Aishwarya Bhati, learned Additional Solicitor General for the Union of India.
9. We will now deal with the following aspects in order to arrive at a just and proper conclusion.
 - (1) What the Constitution of India provides regarding preparation of list for Scheduled Castes for different States.

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- (2) How a list declared under the Presidential Order can be altered, modified or amended.
 - (3) What does the Constitution provide regarding the Backward Classes for every State.
 - (4) The entries in the Presidential Order of 1950 and the subsequent Amendments made by the Parliament in the list published under the Presidential Order of 1950.
 - (5) What the State decides regarding the Backward Classes.
 - (6) The correspondence between the State of Bihar and the Central Government/Union of India.
 - (7) The stand of the Union of India before the High Court and before this Court.
 - (8) The arguments advanced on behalf of the appellants, respondents and the intervenors.
 - (9) Analysis of the arguments.
 - (10) Conclusion.
10. "Scheduled Castes" is defined in the Constitution under Article 366(24) thereof. It reads as follows:
- "366(24). "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution."***
11. Article 341 confers power on the President of India to specify the castes, races or tribes or parts of or groups within castes, races or tribes which, for the purpose of the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory. Further, sub-Clause 2 of Article 341 provides that the Parliament may, by law, include 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. It further creates a prohibition that, save as aforesaid, a Notification issued under Clause-1 shall not be varied by any subsequent Notification. Article 341 of the Constitution reads as follows:

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"Article 341. (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 a notification issued under the said clause shall not be varied by any subsequent notification."

12. From a plain reading of the above Article and in particular sub-Clause 2, two things are clear – first, the list specified under the Notification under Clause-1 can be amended, altered only by law made by Parliament and, second, it prohibits that but for a law made by Parliament a notification issued under sub-Clause-1 cannot be varied by any subsequent notification. That is to say that neither the Central Government, nor the President can make any amendments or changes in the notification issued under Clause-1 specifying the castes in relation to the States or Union territory, as the case may be.
13. Another aspect to be noted from a plain reading of the above Article is that, it does not deal with merely castes, races or tribes but also parts of or groups within castes, races or tribes, therefore, if any change is to be made with respect to inclusion or exclusion not only of any caste, race or tribe but also of a part of or group within any of the caste, race or tribe the same has to be done by law made by the Parliament.
14. The Constitution (Scheduled Castes) Order, 1950 was first notified on 10th August, 1950 and published in the Gazette of India, Extraordinary on 11th August, 1950. With respect to the State of Bihar, the following list was mentioned in the Schedule as "Part II-Bihar":

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“1. *Throughout the State:*

1. *Bauri*
2. *Bantar*
3. *Bhogta*
4. *Chamar*
5. *Chaupal*
6. *Dhobi*
7. *Dom*
8. *Dusadh, including Dhari or Dharhi*
9. *Ghasi*
10. *Halalkhor*
11. *Hari, including Mehtar*
12. *Kanjar*
13. *Kurariar*
14. *Lalbegi*
15. *Mochi*
16. *Musahar*
17. *Nat*
18. ***Pan***
19. *Pasi*
20. *Rajwar*
21. *Turi”*

15. ‘Pan Caste’ was specified as a Scheduled Caste throughout the State of Bihar under the above notification mentioned at Serial No.18.
16. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956, which was enacted by the Parliament being Act No.63 of 1956, with respect to the State of Bihar and the Entry of the caste with which these appeals relate to, at Serial No.18 ‘**Pan**’ as originally mentioned in the order of 1950, was replaced by ‘**Pan or Sawasi**’.
17. In the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967 enacted by the Parliament in the 20th year of the Republic of India, the list with respect to the State of Bihar mentioned in Part-III of the Schedule at Serial No.20, the following Entry of the

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Castes was made as '**Pan; Sawasi, Tanti-Tantwa**'. This bill never came to be enacted as an Act of Parliament and accordingly must have lapsed.

18. The next Amendment then came was the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 was enacted by the Parliament in the 27th year of the Republic of India, according to which, Entry-20 in Part-III of the Schedule with respect to the State of Bihar, the entry remained the same as that in the 1956 Amendment i.e. '**Pan, Sawasi**'.
19. By the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002 enacted by the Parliament in the 53rd year of the Republic of India, Entry 20 for the State of Bihar was substituted by '**Pan, Sawasi, Panr**'.
20. Article 338-B of the Constitution provides that the State Government may establish Commission for Backward Classes.
21. The legislature of the State of Bihar enacted the Bihar State Commission for Backward Classes Act, 1993 (State Act No.12 of 1993) for establishing a State Commission for Backward Classes and to provide for matters connected therewith or incidental thereto. Section 9 of the said Act defines the functions of the Commission; Section 10 defines the powers of the Commission and Section 11 provides that the State Government shall do a periodic revision of lists of Backward Classes every ten years and in doing so would consult the Commission.
22. Further, the legislature of the State of Bihar enacted the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 (Act No.3 of 1992) and under the said Act it declared the lists of Extremely Backward Classes wherein at Serial No.33, "**Tanti-Tantwa**" was shown as one of the castes falling in the Extremely Backward Classes.
23. The Ministry of Social Justice and Empowerment, Union of India has filed an application for impleadment and has made its stand clear in the said application, which is supported by an affidavit and is registered as IA No.100468 of 2024. In paragraph 8 of the said application, it is stated that the Government of Bihar vide letter dated 05.08.2011 had recommended inclusion of "**Tanti-Tantwa**"

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in the list of Scheduled Castes as a synonym of '**Pan, Sawasi, Panr**'. The said proposal of the State was examined as per settled modalities in consultation with the Registrar General of India (in short 'RGI'), who did not support the said proposal vide its comments dated 24.01.2013. The observations of the RGI were conveyed to the State Government on 31.01.2013 to review/further justify the recommendations in the light of the comments made by the RGI. It further mentions that the response of the State Government in the matter was awaited. Thus, till date "**Tanti-Tantwa**" caste has not been included in the list of Schedule Castes of the State of Bihar and, as such, its members are not entitled to Scheduled Castes' status. Paragraph-9 further mentions that the Department had received references from the Union Public Service Commission as also the Department of Personnel and Training, Government of India to show that Members of "**Tanti-Tantwa**" community, who were otherwise appearing at Serial No.48 of the Central List of Other Backward Classes were being issued Scheduled Castes Certificates in the name of '**Pan, Sawasi, Panr**' in view of the State Government's Resolution dated 01.07.2015.

24. Paragraph 10 clearly states that under Article 341 of the Constitution and the Constitution (Schedule Castes) Order, 1950 and its Amendments, "**Tanti-Tantwa**" Caste, which does not appear in the list of Scheduled Castes of Bihar cannot be issued Scheduled Castes Certificates treating them to be '**Pan, Sawasi, Panr**' at Serial No.20 of the list of Scheduled Castes of Bihar. The Ministry had written more than half a dozen letters right from 2015, 2016, 2018, 2019 and 2020 requesting the Government of Bihar to issue necessary instructions to the Authorities empowered to not to issue Scheduled Castes Certificates to members of "**Tanti-Tantwa**" in the name of '**Pan, Sawasi, Panr**'. In paragraph-11, it is stated that the Government of Bihar informed the Central Ministry that as the Resolution dated 01.07.2015 was challenged before the Patna High Court and the High Court had upheld its legality vide judgment dated 03.04.2017, as such, issuance of Scheduled Castes Certificates to the members of "**Tanti Tantwa**" and extension of benefits of Scheduled Castes to them was legally permissible. Paragraph nos.13, 14 and 15 support the submissions of the appellants in assailing the correctness of the impugned judgment of the High Court dated 3rd April, 2017. Thus, the Union of India has fully supported the appellants.

Digital Supreme Court Reports**Submissions on behalf of the appellants.**

25. Ms. Indira Jai Singh referring to the Constitutional provisions contained in Articles 366(24) and 341 submitted that the impugned Notification/ Resolution dated 01.07.2015 cannot stand and needs to be quashed, as the State Government had no competence power or Authority to direct the inclusion of “**Tanti-Tantwa**” in the lists notified under Article 341. According to her, any amendment or change in the specified lists of Scheduled Castes notified under Article 341 can only by a law enacted by the Parliament. The State has no role to play in tinkering with the lists notified under Article 341.
26. It was also submitted on behalf of the appellants that the State was fully aware that it had no authority or competence to amend the list as it had itself written to the Central Government for inclusion of “**Tanti-Tantwa**” in Entry-20 of the list of Scheduled Castes for the State of Bihar along with ‘**Pan, Sawasi, Panr**’. The said request of the State Government made in the year 2011, was not accepted in view of the comments made by the RGI in January, 2013 and the same were duly communicated to the State vide letter dated 31.01.2013. By the said letter, it was also requested that the State may further review and provide further justification in support of their request for including “**Tanti-Tantwa**” in the lists of Scheduled Castes. The State chose not to give any reply to the same and instead in a totally *mala fide* manner in order to illegally extend benefit to the “**Tanti-Tantwa**” castes, it issued the Notification dated 01.07.2015 whereby “**Tanti-Tantwa**” castes were to be treated as Scheduled Castes and extended all benefits. The State has to be put to strict proof to explain, as to why, they had directed for merger of “**Tanti-Tantwa**” in the lists of Scheduled Castes with ‘**Pan, Sawasi, Panr**’.
27. It is also the submission of Ms. Jai Singh that the Notification dated 01.07.2015 cannot be severed so as to retain its first part of deleting/removing “**Tanti-Tantwa**” from the list of Extremely Backward Classes notified under the 1992 Act and to quash the second part only, which directed for merger of “**Tanti-Tantwa**” with ‘**Pan, Sawasi Panr**’ at Entry-20 of the Scheduled Castes lists for the State of Bihar. According to her, if the impugned Notification is partly quashed and partly upheld, then the caste “**Tanti-Tantwa**” would be left nowhere and would not be entitled to any reservation

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or benefit either as Extremely Backward Class or as Scheduled Caste. She, thus, submitted that the impugned notification is non-severable and deserves to be quashed as a whole.

28. She has further submitted that request of the State of Bihar as also the Intervenors to continue to extend the benefits already granted during this period to the members of the “**Tanti-Tantwa**” caste, should not be accepted. According to her, the exercise by the State of issuing the Notification dated 01.07.2015 was clearly *mala fide* and deliberate mischief on its part. The continuous issuance of Scheduled Castes Certificates to the members of “**Tanti-Tantwa**” community despite repeated directions by the Central Government not to issue such certificates clearly reflects the defiance of the State Government not to correct itself rather continue with impunity to issue certificates and treat them as Scheduled Caste.
29. In the process of issuing such certificates and extending benefits of Scheduled Castes, the State has deprived the genuine members of the Scheduled Castes community covered under the lists published under Article 341, which should be restored back to the Scheduled Caste community. She also referred to an order dated 22.11.2021 passed by this Court in the appeal filed by Ashish Rajak, wherein this Court had clearly provided that all appointments are subject to the outcome of these proceedings.
30. She further submitted that members of “**Tanti-Tantwa**” community may be extended benefits available to them under the Extremely Backward Classes by the State of Bihar, but under no circumstances, should such members of “**Tanti-Tantwa**” community, who have benefited under the completely illegal and *mala fide* exercise of the State, be allowed to continue on a reserved seat of the Scheduled Caste taking advantage of the Resolution dated 01.07.2015.
31. She has also very fairly submitted that she would not have any objection to the State not making any recovery from the beneficiaries of such illegal appointments and in accommodating such candidates under the Extremely Backward Class quota/reservation but in no case should such candidates be allowed to withhold the seats reserved for the Scheduled Castes which should be forthwith returned to the Schedule Castes for the benefit of the notified castes only.

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32. On the other hand, Sri Ranjeet Kumar, learned Senior Counsel appearing for the State of Bihar tried to justify the Resolution dated 01.07.2015 by urging that the Resolution is only clarificatory and nothing more; that the statutory and socio historical factors surrounding the controversy warrant that “**Tanti-Tantwa**” be treated as synonymous with ‘**Pan, Sawasi**’. The State has only acted on the recommendation of the State Commission for Extremely Backward Classes dated 02.02.2015 and, as such, no fault can be found with the resolution of the State. He has further referred to the following socio historical factors and other statutory provisions considered by the Commission while making the recommendation:

- A. In Chapter 11, Para 11.3 of the first report of the Backward Commission, Personnel Department, Backward Commission, Pan is mentioned as Tanti.*
- B. In the 10th Report of 1978-80 of the Bihar Legislative Assembly for the welfare of Scheduled Castes and Scheduled Tribes, the committee accepted the report of Mungeri Lal Aayog in which it was reported that the persons called Tanti are actually Pan and hence entitled to benefits granted to the Scheduled Castes.*
- C. In 1967, a bill was placed before the Parliament, in which it was proposed in the context of Bihar State that Pan/Swasi/Tanti/Tatwa should be enlisted in the Scheduled Castes for the State of Bihar but the same was not appreciated by the Parliament.*
- D. The report of Kaka Kalekar Backward Commission recommended to the State that the caste Tanti/Tatwa should be incorporated with Pan.*
- E. The Department of Personnel Administrative Reforms and Rajbhasha, Jharkhand vide its letter No.1107 dated 01.03.2004 on the basis of the report of Jharkhand Tribal Welfare and Research Institute requested the Home Ministry, Government of India, that Tanti/Tatwa and Pan are the same caste and hence should be considered as a synonym of Pan/ Swasi.*

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- F. *In the book “Tribes and Caste of Bengal” by HH Rizley, pg. 155, it is mentioned that Pan/Swasi and Tanti are synonymous and come from the Weaver community.*
 - G. *The synonymity between these castes were further ascertained by the ethnographic report prepared by A.N. Sinha Institute, Patna.*
 - H. *The social conditions and cultural backgrounds of these castes are the same, and it is the usual practice to establish matrimonial relations among them.*
 - I. *A similar finding is found in the Central Government report.*
 - J. *The National Backward Commission, now a Constitutional Body, has also recommended for deletion of Tanti/Tantwa from the list of Backward Classes as they are synonymous of Pan/Sawasi.”*
33. His further submission is that recommendation made by the State Commission is binding on the State and Judicial review in such matters may not be permissible except in an extreme case of perversity or otherwise. He also referred to the recommendation of the National Commission for Backward Classes made on 29.03.2022 regarding synonymity of “**Tanti-Tantwa**” with ‘**Pan, Sawasi**’. Lastly, it was submitted that in the event this Court agrees with the submissions of the appellants and decides to quash the Resolution dated 01.07.2015, then the benefits/rights already accrued to the members belonging to the caste of “**Tanti-Tantwa**” as Scheduled Castes may not be affected on the principles of equity and good conscience. Reliance was placed upon a judgment of this Court in the case of **State of Maharashtra Vs. Keshao Vishwanath Sonone**¹. In particular, reliance was placed upon paragraphs 115 & 116 of the said judgment having a coram of three Hon’ble Judges.
34. Lastly, it was submitted that as the matter is still pending for consideration before the Union of India based on the recommendations of the National Commission for Backward Classes dated 29.03.2022,

¹ [2020] 11 SCR 597 : (2021) 13 SCC 336

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direction may be issued to Union of India to take a decision within a fixed timeframe and, in the meantime, the present appeals may be kept pending.

35. Insofar as the private respondents and other intervenors are concerned, their submission is akin and in support of the submission of Mr. Ranjeet Kumar to the effect that all those members of “**Tanti-Tantwa**” community, who had derived advantage/benefit of Scheduled Castes under the Certificates issued to them pursuant to the Resolution dated 01.07.2015 may not be adversely affected and may be protected on the principles of equity and good conscience.
36. Having considered the submissions advanced, we have no hesitation in holding that the Resolution dated 01.07.2015 was patently illegal, erroneous as the State Government had no competence/authority/power to tinker with the lists of Scheduled Castes published under Article 341 of the Constitution. The submission of the respondent-State that Resolution dated 01.07.2015 was only clarificatory is not worth considering for a moment and deserves outright rejection. Whether or not it was synonymous or integral part of the Entry-20 of the lists of Schedule Castes, it could not have been added without any law being made by the Parliament. The State knew very well that it had no authority and had accordingly forwarded its request to the Union of India in the year 2011. The said request was not accepted and returned for further comments/justification/review. Ignoring the same, the State proceeded to issue the Circular dated 01.07.2015. The State may be justified in deleting “**Tanti-Tantwa**” from the Extremely Backward Classes list on the recommendation of the State Backward Commission, but beyond that to merge “**Tanti-Tantwa**” with ‘**Pan, Sawasi, Panr**’ under Entry 20 of the list of Scheduled Castes was nothing short of *mala fide* exercise for whatever good, bad or indifferent reasons, the State may have thought at that moment. Whether synonymous or not, any inclusion or exclusion of any caste, race or tribe or part of or group within the castes, races or tribes has to be, by law made by the Parliament, and not by any other mode or manner.
37. The submission that the recommendation of the Commission for Extremely Backward Classes was binding on the State, is not a question to be determined here, inasmuch as, even if we accept

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the submission, such recommendation could relate only to the Extremely Backward Classes. Whether or not to include or exclude any caste in the list of Extremely Backward Class would be within the domain of the Commission. The Commission would have no jurisdiction to make recommendation with respect to any caste being included in the Scheduled Castes lists and, even if it makes such a recommendation, right or wrong, the State has no authority to proceed to implement the same when it was fully aware that the Constitution does not permit it to do so. The Provisions of Article 341 sub-Clause 1 and sub-Clause 2 are very clear and discrete. There is no ambiguity or vagueness otherwise requiring any interpretation other than what is mentioned therein. The State of Bihar has tried to read something in order to suit its own ends for whatever reason, we are not commenting on the same.

38. The High Court fell in serious error in upholding the said Notification on a completely wrong premise without referring to Article 341 of the Constitution.
39. Now comes the question with regard to protecting those Members of “**Tanti-Tantwa**” community who were extended benefit of Scheduled Castes pursuant to the Resolution dated 01.07.2015. In the present case, the action of the State is found to be *mala fide* and *de hors* the constitutional provisions. The State cannot be pardoned for the mischief done by it. Depriving the members of the Scheduled Castes covered by the lists under Article 341 of the Constitution is a serious issue. Any person not deserving and not covered by such list if extended such benefit for deliberate and mischievous reasons by the State, cannot take away the benefit of the members of the Scheduled Castes. Such appointments would under law on the findings recorded would be liable to be set aside. However, as we have found fault with the conduct of the State and not of any individual member of the “**Tanti-Tantwa**” community, we do not wish to direct that their services may be terminated or that recovery may be made for illegal appointments or withdrawal of other benefits which may have been extended. We are of the view that all such posts of the Scheduled Castes reserved quota which have been extended to the members of the “**Tanti-Tantwa**” community appointed subsequent to the Resolution dated 01.07.2015 be returned to the Scheduled Castes Quota and all such members of the “**Tanti-Tantwa**” community, who have been extended such benefit may be accommodated under their

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original category of Extremely Backward Classes, for which the State may take appropriate measures.

40. Accordingly, the Appeals succeed and are allowed.
41. The impugned Resolution dated 01.07.2015 is, hereby, quashed.
42. It is further directed that such posts of the Scheduled Castes Quota which had been filled up by members of “**Tanti-Tantwa**” community availing benefit on the basis of Resolution dated 01.07.2015 may be returned to the Scheduled Castes category and such candidates of “**Tanti-Tantwa**” community be accommodated by the State in their original category of Extremely Backward Classes by taking appropriate measures.
43. Pending applications, if any, disposed of.

Result of the case: Appeals Allowed.

[†]*Headnotes prepared by:* Nidhi Jain