SUPREME COURT OF INDIA

Raju Ramsing Vasave

Vs.

Mahesh Deorao Bhivapurkar

C.A.No.5308 OF 2008 arising out of SLP (Civil) No. 7555 of 2008

(S.B. Sinha and Aftab Alam)

29/08/2008

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Whether a co-employee of the respondent No. 1 who was working as a Field Officer with the Maharashtra Pollution Control Board can maintain an independent special leave questioning the judgment of a High Court setting aside an order of the Schedule Tribe Caste Certificate Scrutiny Committee is the question involved herein.

3. Before, however, we advert thereto, we may notice the admitted factual matrix of the matter.

Respondent No. 1 claims himself to be a member of Schedule Tribe being belonging to "Halba" tribe notified in terms of the Constitution (Scheduled Tribes) Order, 1950. Respondent No. 1 and his family members are highly educated. The caste of his father in the school records was shown as "Koshti" whereas the caste of his uncle was also shown as "Koshti" which was, however, later on corrected as "Halba". One of his cousins Ku. Sandhya Manohar Bhivapurkar, daughter of the uncle of the respondent No. 1, was also granted a certificate as belonging to the "Halba" community.

4. An intricate question as to whether "Koshti" is a sub-caste of "Halba" or "Halbi" came up for consideration before a Division Bench of the Bombay High Court in Milind Sharad Katware and others v. State of Maharashtra and others [1987 Mh. L.J. 572]. In the said judgment, the Division Bench inter alia referred to the report of a Joint Committee headed by Dr. A.K. Chandra which had been submitted to the Parliament on 17.11.1969 to opine:

"...It does appear from the report that representation sent to the Joint Committee by Halba Koshti Samaj was circulated to the members and that the Committee had visited Nagpur. However, it does not appear that either evidence is taken on the matter as has been done in the cases of several representations about other Committees or that even without that a conclusion is reached that Halba - Koshti does not form part and parcel of Tribe "Halba' Halbi". It is thus clear that the enquiries undertaken by several authorities and Courts so far and the enquiry which we are making now in these petitions do not amount to amending the list in any manner whatsoever."

Various authorities and the purported custom of the Halba-Koshti had also been taken into consideration by the court to hold:

"(1) It is permissible to enquire whether any sub-division of a Tribe - though not mentioned in the Act - is a part and parcel of the Tribe mentioned therein.

(2) The decisions rendered by the Courts from time to time about Halba Koshtis being part and parcel of "Halba/ Halbi" tribe are binding on the government and authorities constituted by it.

(3) The scope of enquiry in cases relating to students' admissions before 8th March 1985 was limited to points mentioned in the circular dated 31st July 1981.

(4) It is impermissible to take inconsistent stand about a tribe in cases of near relatives.

(5) Circulars dated 31st July 1981 and 23rd September 1983 are valid.

(6) `Halba Koshti' is a sub-division of main tribe "Halba/ Halbi" as per entry No. 19 in the Act as applied to Maharashtra.

(7) Every Koshti is not Halba Koshti." The State of Maharashtra came up in appeal before this Court thereagainst. A limited order of stay was passed directing:

"There will be no order of stay of the judgment of the High Court but subject to the condition that Halba Koshtis will be entitled to admission to the seats reserved for Scheduled Tribes on the basis of High Court judgment, provided the authorities granted admission are satisfied that they or their parents had income of less than Rs. 7200/- per annum."

4. Indisputably, however, the respondent No. 1 also filed a writ petition claiming the said benefit which was marked as W.P. No. 1347 of 1988. The Division Bench of the Bombay High Court following its decision in Milind Sharad Katware (supra) allowed the said writ petition by an order dated 11.08.1988 stating:

"1. This petition relates to the caste claim Halba. Petitioner's father's real elder brother has been adjudicated as belonging to Scheduled Tribe.

2. In the case of Milind Sharad Katware Vs. State of Maharashtra (1987 Mah. Law Journal 572), we have taken a view that it is impermissible to take inconsistent view between the cases of near relatives in such matters. Hence the impugned orders are quashed and set aside. The petitioner is declared to be belonging to Scheduled Tribe - Halba."

5.

It is of some significance to note that the Government of Maharashtra appointed an Expert Committee known as Ferriera Committee. It submitted its report in the year 1985. In its report, the Expert Committee stated:

"The Halba/ Halbi Tribe, as per the Constitution (Scheduled Tribes) Order, (1950) read with Part - IX of the second schedule to the Scheduled Castes, Scheduled Tribes Order (Amendment) Act (1976) has been declared a scheduled Tribe in the State of Maharashtra and has appeared at Sr. No. 19 in the schedule. The members of the caste known as Koshti/ Halba - Koshti, residing in particular in the Vidarbha areas, claim that they belong to the said Halba/ Halbi tribe and are entitled to obtain caste certificates as belonging to the Halba/ Halbi scheduled Tribe. Their contention is that the word "Koshti" is indicative of their traditional occupation, namely, weaving and it is not connected with the caste. Therefore, they should get all the facilities and concessions extended to the Scheduled Tribes. On the other hand, the Halba/ Halbi tribals, particularly of the Bhandara and Gadchiroli districts and their tribal representatives in the Legislative Assembly, Maharashtra, represented to the Government that persons belonging to the Halba/ Koshti/ Koshti caste from the Vidarbha region claim to belong to the Halba/ Halbi tribe in order to secure concessions sanctioned for the scheduled Tribes. The Halba Koshtis/ Koshtis do not belong to the scheduled Tribes."

Its conclusions were:

"9.1 The expert committee appointed by the Government of Maharashtra to examine the Halba/ Halba Koshti problem undertook a careful study of the secondary literature, initiated filed investigations and interviewed a number of Koshtis, a Halba Koshtis and Halba Tribals. Consequently, it has come to the conclusion that the Koshtis are a caste, the Halba Koshtis a sub-caste of the Koshti caste and the Halbas a Scheduled Tribe. The Halba tribals have no relations of identity with the Halba Koshti sub-caste of the Vidarbha Region, except for a partially common nomenclature.

9.2 More specifically, the Committee has come to the conclusion that the Koshtis and Halba Koshtis are not characaterised by primitive traits, a relatively distinct culture, culture, culturally and territorially demarcated areas of habitation relative shyness of contact with the community at large and a high degree of backwardness whereas the Halba/ Halbi Scheduled Tribe is indeed so characterised.

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9.12 In brief, an examination of the secondary source from the year 1827 to the year 1985, a review of the field data and an evaluation of the information accruing from interviews makes it clear that the Halba Koshtis are a caste with a specific occupation or a sub-caste of the Koshti caste whose traditional occupation is weaving. In the census records the Halbas have been classified as a tribe and the Koshtis as a caste. Furthermore, the facts overwhelmingly indicate that the Koshtis are concentrated in cities and towns like Nagpur, Bhandara Umred and so on, whereas the Halba tribals are largely located in the hilly and forest areas of Bhandara and Gadchiroli districts.

Thus with the weight of evidence before it, the Expert Committee concludes that there are no decisive social, ethnic, linguistic, religious and other affinities between the Halba Koshi sub- caste of the Koshti caste, on the one hand and the Halba tribe in Maharashtra, on the other."

6. The case of the respondent No. 1 was referred to the Schedule Tribe Certificate Scrutiny Committee. The Committee held:

"Thereafter the Scrutiny Committee decided to conduct school enquiry of the case and approached the primary school of the candidate's father i.e. Mangalwari Prathmik Shala, Umrer, District Nagpur. In the enquiry with the school it was revealed that the father of the candidate had studied in

this school from 1946 to 1950 and his caste has been recorded as Koshti, at Sr. No. 3100. This shows that the caste of the candidate's father was recorded as Koshti. This is pretty old record pertaining to period prior to the passing of the Constitution Scheduled Tribe Order 1950 and obviously carries more evidential value than any other subsequent evidence because there was no provocation at that time for noting wrong caste claims. Thus, from an important documentary evidence it has been established that the caste of the candidate's father is Koshti. The caste of the father determines the caste of his progency in Hindu society. When it has proved that caste of the candidate's father is Koshti, the caste of the candidate is bound to be Koshti and he cannot claim to be belonging to Halba, Scheduled Tribe."

The Committee considered all the documents including the school registers. It went into the question as to whether the respondent No. 1 followed the traits of the members of the Scheduled Tribe to hold: "After considering all the aforesaid documents and in exercise of the powers vested in it, the Scrutiny Committee has come to the conclusion that Shri Mahesh Deorao Bhivapurkar does not belong to Halba Scheduled Tribe and as such his claim towards the same is held invalid. He belongs to Koshti caste which comes under other Backward Classes and as such the caste certificate of his belonging to Halba, Scheduled Tribe granted by the Executive Magistrate, Nagpur vide NO. 235/MEC-81/87-88 dated 18.8.1987 is hereby cancelled."

7. The matter was thereafter referred to the Caste Scrutiny Committee. However, relying on or on the basis of the decision of the High Court dated 11.08.1988 in Writ Petition No. 1347 of 1988, the Scheduled Tribe Caste Scrutiny Committee, Pune refused to grant a certificate in his favour by an order dated 18.09.1997, stating:

"Your claim towards Halba has been adjudicated by Scrutiny Committee on 24.1.1988 and held invalid against this decision you have filed Writ Petition No. 1347 of 1988 and the same is allowed by High Court on 11.8.1988. The Hon'ble High Court quashed and set aside the order of Director, Tribunal Research and Training Institute, Pune by referring the similar case of Milind Sharad Katware Vs. State of Maharashtra. As per the S.C. Interim order the benefit of ST is available for the candidates for the education purpose only. Therefore, there is no question to grant validity only on the basis of limited orders."

The said order appears to have been passed on a wrong premise that this Court in the case of Milind Sharad Katware (supra) had passed an interim order. Although the said order was passed on a wrong premise. Its validity was not questioned.

8. In Milind Sharad Katware (supra), this Court by a judgment and order dated 28.11.2000 (hereinafter referred to as "Milind") held:

"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."

However, it was directed:

"38. Respondent 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 practising as a 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 1. If any action is taken against Respondent 1, it may lead to 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 practising 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 of 1985 and other related matters, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

9. Appellant and the respondent No. 1 together with two others were appointed as Field Officers. Whereas the respondent No. 1 was placed at Sl. No. 69 of the Select List, the appellant was placed at Sl. No. 73 thereof. As against the names of the S.T. candidates, however, it was stated:

"Services of these candidates will be continued subject to "Validity Certificate"

10. However, we may notice that an application in the disposed of writ petition bearing No. 1347 of 1988 was filed by the respondent No. 1 in 2006; the prayers made wherein read as under:

"i) this Hon'ble High Court may be pleased to issue appropriate direction to the respondent No. 3 to issue caste validity certificate pursuant to the judgment dated 11.8.1988 in Writ Petition No. 1347 of 1988 in the interest of justice;

ii) direct the respondent No. 4 to consider the petitioner as backward class candidate belonging to Halba Scheduled Tribe, as per declaration of the Hon'ble High court as and when promotion to the candidates of Scheduled Tribe category is ordered/ effected, till the point of time of issue of caste validity certificate by the Caste Certificate Scrutiny Committee i.e. respondent No. 3 as he is topping the list of Scheduled Tribe employee in the cadre of Field Officer as per circular letter dated 3.12.2002."

11. It is of some significance to notice that in the original writ petition, the employer was not a party. In the interlocutory application, however, it was impleaded as a party.

12. Before we advert to the impugned judgment of the High Court, we may notice that the Maharashtra Pollution Control Board issued a circular on or about 14.12.2004 directing:

"As per aforementioned referred letter, it is communicated to you about submission of Scheduled Tribe Officer/ Employee Caste Validity Certificate. And those officers/ employees who are not having caste validity certificate their record pertaining to Caste Certificate is to be sent to verification committee. But the office heads has not looked into the matter specifically and acted accordingly. You are communicated once again vide this letter that those officer/ employee in your office which are ST there caste validity certificate is to be submitted to establishment branch without fail or regarding his submission and validity certificate the report of action taken at your level is to be communicated immediately.

Thereafter officer/ employee (Backward class) Scheduled Caste, Scheduled Tribe, Vimukta Jati, Nomadic Tribe, Other Backward Special Backward etc. in the cadre such officer/ employee are required to submit their caste validity certificate to this office immediately.

The officer/ employee who has not submitted validity certificate or not having validity certificate is required to submit the record through office to the caste scrutiny committee and the report of the same should be furnished so that all the backward class officer/ employee's validity certificate can

be attached to their service book.

In this matter all office head, HQ controlling officer are hereby informed that they have to look into the matter specifically and take action so early and submit the report to this office immediately. Backward Class officer/ employees cannot be considered for the promotion without submission of validity certificate. This has to be brought to the notice of respective candidates."

By reason of the impugned judgment, the High Court held:

(i) It was not necessary to implead the Maharashtra State Pollution Control Board as a party in the application.

(ii) The order dated 11.08.1988 passed in the Writ Petition No. 1347 of 1988 attained finality whereby the respondent No. 1 had been declared to be belonging to the Schedule Tribe "Halba".

(iii) The decision of the Caste Scrutiny Committee declining grant of certificate relying on or on the basis of the order dated 14.07.1986 passed by this Court was wrongly interpreted and it committed an error in refusing to grant such a certificate.

It was directed:

"Hence, the application is allowed in said terms and production of caste certificate dated 13.8.1987 by the applicant with respondent No. 4 - employer would be sufficient compliance with the Circular issued by respondent No. 4 in order to hold that the applicant belongs to the Scheduled Tribe - Halba by virtue of the verdict of this Court in Writ Petition No. 1347 of 1988 decided on 11.8.1988."

13. Mr. Gaurav Agarwal, learned counsel appearing on behalf of the appellant, would urge that although this special leave petition is not in the nature of a public interest litigation as such, but keeping in view of the fact that the judgment of the High Court is wholly without jurisdiction being contrary to the decision of this Court in Milind as well as a large number of decisions following the same, the impugned judgment cannot be sustained.

14. Mr. A.V. Savant, learned senior counsel appearing on behalf of the respondents, on the other hand, would contend that the claim of the respondent No. 1 had never been advanced on the basis that he belongs to Koshti, a sub-caste of Halba tribe but all along the same had been advanced on the basis that he belongs to the said tribe.

Contending that the Division Bench of the Bombay High Court in its judgment dated 11.08.1988 having held that the respondent No. 1 should be declared to be belonging to "Halba" tribe on the premise that his other relatives had been declared as such, no exception to the impugned judgment can be taken and for the aforementioned purpose, the caste certificates granted to the father of the respondent No. 1, his uncle and the cousin could be relied upon.

The learned counsel would urge that it would be incorrect to contend that this Court in Milind had overturned the decision of the High Court that the test of scrutiny as regards the traits of a member of the Scheduled Tribe should not be on the premise that his other near relatives had been granted the certificates. In support of the said contention, our attention has been drawn to the following questions framed by this Court in Milind :

"(1) Whether at all, it is permissible to hold inquiry 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 entry concerned 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 the State of Maharashtra, even though it is not specifically mentioned as such?"

So far as the question No. 2 is concerned, it has been held that "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".

15. Article 342 of the Constitution of India reads as under:

"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 notification5 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."

16. In terms of the said provision, the Constitution (Scheduled Tribes) Order, 1950 was issued. The tribe "Halba" finds place in the said order.

"Koshti", however, in the State of Maharashtra comes under `special backward class'. Their occupation may be the same but it is well-settled that before a person can obtain a declaration that he is a member of a scheduled tribe, he must be a member of a tribe. [See Nityanand Sharma v. State of Bihar (1996) 3 SCC 576]

The Parliament, it is trite, alone can amend the law and the schedule for the purpose of including or excluding therefrom a tribe or tribal community or part of or group within the same in the State, district or region and the declaration made by the Parliament is conclusive. For the said purpose, the court does not have any jurisdiction so as to enable it to substitute any caste and tribe.

17. It is not correct to contend that the Bombay High Court in Milind Sharad Katware (supra) was not concerned with the question as to whether Halba - Koshti is a sub-tribe of Halba or Halbi. It in fact considered the said question in great depth. It referred to a large number of judgments. The doctrine of stare decisis was applied.

18. Milind was applied in a large number of cases. Some of the judgments had been accepted by the Government. It is in the aforementioned backdrop, this Court in Milind opined:

"31. The High Court applied the doctrine of stare decisis on the grounds that the decisions referred to above were considered judgments; even the Government accepted their correctness in the courts; the State Government independently took the same view after repeated deliberations for a 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 Respondent 1 was not in a position to support this reasoning of the High Court and rightly so in our opinion. Among 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..."

It was categorically held that the High Court was not correct in invoking and applying the doctrine of stare decisis.

19. Furthermore, the Bombay High Court proceeded on the basis that the "Halba-Koshtis" were treated in the region of Vidarbha as "Halbas". This Court noticed that the State of Maharashtra had issued a large number of circulars pointing out that a large number of persons who did not belong to Scheduled Tribe are taking benefit thereof. It was in the aforementioned premise, this Court opined that the opinion of the Caste Scrutiny Committee which was constituted in terms of the decision of this Court in Kumari Madhuri Patil and Another v. Addl. Commissioner, Tribal Development and Others [(1994) 6 SCC 241] had received the statutory recognition by the State, stating:

"...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 inquiry should be held before issue of the 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 a 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 v. Abhay 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 Respondent 1 in any way. Even otherwise, as already stated above, on facts found and established the authorities have rejected the claim of Respondent 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 1 belonged to "Koshti" caste and has no identity with "Halba/Halbi" which is the Scheduled Tribe under Entry 19 of the Presidential Order, relating to the 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 Question 2 also in the negative. Hence it is answered accordingly."

It was furthermore noticed that even the Central Government had issued several circulars which had been ignored by the High Court in arriving at the said decision.

20. One of the questions which has been raised before us is as to whether the offer of appointment made in favour of the respondent No. 1 by the Maharashtra Pollution Control Board dated 16.03.1998 is final so as to attract the direction contained in paragraph 38 of Milind (supra).

Where factual foundation arrived at by a committee authorised in this behalf concludes that a person is not a member of the Scheduled Tribe would remain operative unless set aside by a superior court. The judgment of the High Court in favour of the respondent No. 1 was rendered on a wrong premise. The claim of the respondents may be that he belonged to the Halba tribe but, therefor, no factual foundation was placed before the High Court. The High Court relied solely on its earlier decision to hold that Koshti would come within the purview of the Scheduled Tribe of Halba or Halbi. The decision was rendered in 1988. The records maintained by the school where the respondent studied were not placed before the High Court. Only when the Caste Scrutiny Committee, a statutory committee, proceeded to enquire into the matter, the truth came out.

We do not mean to suggest that an opinion formed by the Committee as regards the caste of the near relative of the applicant would be wholly irrelevant, but, at the same time, it must be pointed out that only because, by mistake or otherwise, a member of his family had been declared to be belonging to a member of the Scheduled Tribe, the same by itself would not be conclusive in nature so as to bind another Committee while examining the case of other members of the family at some details. If it is found that in granting a certificate in favour of a member of a family, vital evidences had been ignored, it would be open to the Committee to arrive at a different finding.

21. We reiterate that to fulfill the constitutional norms, a person must belong to a tribe before he can stake his claim to be a member of a notified Scheduled Tribe. When an advantage is obtained by a person in violation of the constitutional scheme, a constitutional fraud is committed.

22. Contention of Mr. Savant must be tested on the premise as to whether the principle of res judicata applies in a case of this nature.

Principle of res judicata is undoubtedly a salutary principle. Even a wrong decision would attract the principle of res judicata. The said principle, however, amongst others, has some exceptions, e.g., when a judgment is passed without jurisdiction, when the matter involves a pure question of law or when the judgment has been obtained by committing fraud on the court.

In Williams v. Lourdusamy and Anr. [(2008) 5 SCC 647], this Court stated the law, thus:

"11. The principles of res-judicata although provide for a salutary principle that no person shall be harassed again and again, have its own limitations. In O.S. No. 402 of 1987, the respondent No. 2 was not impleaded as a party. In his absence therefore, the issue as to whether respondent No. 2 had entered into an oral agreement of sale or not could not have been adjudicated upon. The said Court had no jurisdiction in that behalf. If that was decided in the said suit, the findings would have been nullities."

23. Two legal principles which would govern a case of this nature, are:

(i) A decision rendered without jurisdiction being a nullity, the principle of res judicata shall not apply.

(ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis of thereof or otherwise.

24. In support of the first principle, we may at the outset refer to Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu [(1979) 2 SCC 34] wherein this Court, while discussing the effect of Section 11 of the CPC on a pure question of law or a decision given by a court without jurisdiction, opined:

"Moreover, this is a pure question of law depending upon the interpretation of Article 371D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

A Three - Judge Bench of this Court in Ashok Leyland Ltd. v. State of Tamil Nadu and Anr. [(2004)3SCC1], held:

"120. The principle of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like, estoppel, waiver or res judicata."

[See also Dwarka Prasad Agarwal (D) By LRs. and Anr. v. B.D. Agarwal and Ors. (2003) 6 SCC 230, Union of India v. Pramod Gupta (2005) 12 SCC 1 and National Institute of Technology and Ors. v. Niraj Kumar Singh (2007) 2 SCC 481]

25. So far as the second principle, noticed by us, is concerned, there is no dearth of authority.

Fraud vitiates all solemn acts. When an order has been obtained by practising fraud on the court, it would be a nullity.

In Ganpatbhai Mahijibhai Solanki v. State of Gujarat and Ors. [(2008) 3 SCC 556], this Court held:

"It is now a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same." It was further observed:

"In T. Vijendradas and Anr. v. M. Subramanian and Ors., this Court held;

21. ...When a fraud is practiced on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. [Kendriya Vidyalaya Sangathan and Ors. v. Ajay Kumar Das and Ors. & A. Umarani v. Registrar, Cooperative societies

and Ors.]

22. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party, who is a beneficiary thereunder...."

In K.D. Sharma v. Steel Authority of India Ltd. and Ors. [2008 (10) SCALE 227], this Court opined:

"16. Reference was also made to a recent decision of this Court in A.V. Papayya Sastry and Ors. v. Govt. of A.P. and Ors. (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated:

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order --by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

17. The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

26. The order dated 11.08.1988, thus, would not operate as a res judicata so as to disable it from considering the merit of the case of the respondent No. 1 by the State of Maharashtra or Maharashtra Pollution Control Board afresh. The decision of the High Court ex facie is unsustainable.

27. We may at this juncture notice some decisions of this Court where the question at hand has been discussed.

In State of Maharashtra and Others v. Ravi Prakash Babulalsing Parmar and Another [(2007) 1 SCC 80], this Court held:

"23. The makers of the Constitution laid emphasis on equality amongst citizens. The Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter.

24. We, with respect, fail to appreciate the approach of the High Court as it proceeded on the premise that once the surname of the respondent tallied with the name of the tribe, which finds mention in one or the other entries of the Schedule appended to the 1976 Order, the same must be treated to be sacrosanct and no enquiry in relation to the correctness of the said certificate can be gone into by any committee. The observations and directions of the High Court, in our considered opinion, were not only contrary to the judgments of the Court but also fall short of the ground realities.

25. Mr Arvind Savant, the learned Senior Counsel, would place strong reliance on a decision of this Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and in particular paras 18 and 19 thereof, which read as under: (SCC p.365)

"18. These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid.

19. The Thandan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or, indeed, to this Court to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thandan in the Malabar area of the State was

excluded from the benefits of the Scheduled Castes Order."

In Addl. General Manager - Human Resource, Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde [(2007) 5 SCC 336], this Court held:

"14. In the case in hand the respondent got appointment on 31-5-1982 on a post, which was reserved for a member of Scheduled Tribe. On receiving complaints the employer referred the matter to the District Collector, Nagpur and also to the Scrutiny Committee in March 1991. The subsequent period has been spent in making enquiry and in litigation as the respondent filed three writ petitions. In view of the principle laid down by this Court we are clearly of the opinion that his services were rightly terminated by the appellant and the High Court was in error in directing his reinstatement. The order passed by the High Court, therefore, has to be set aside."

In State of Maharashtra & Ors. v. Sanjay K. Nimje [2007(2) SCALE 214], it was held that a person cannot get a benefit to which he is not otherwise entitled to.

28. Our attention has been drawn to the fact that the appellant herein had filed applications for leave to file two special leave applications; one against the order dated 26.06.2006 and another against the order dated 11.08.1988. Whereas leave has been granted and notice had been issued on 16.04.2007 in the order 26.06.2006, the same has been declined in respect of the order dated 11.08.1988.

29. Contention of the learned counsel is that the order dated 11.08.1988 has even been given the stamp of finality by this Court.

We are unable to accept the said contention. Apart from the fact that the petition for leave against the order dated 11.08.1988 was dismissed on the ground of delay alone, the appellant herein is affected by the impugned judgment of the High Court dated 26.06.2006. When the order dated 11.08.1988 was passed, the judgment of the Bombay High Court was prevailing. Appellant was not in picture at that point of time.

A question, furthermore, arises as to whether in a disposed of writ petition, a separate application was maintainable although cause of action therefor arose subsequently. It is urged that the said application was filed for implementing the earlier order of the court. It could not be so as in the meantime the Caste Scrutiny Committee had already taken a decision. Subsequent events of grave importance had taken place which could not be ignored.

The Central Government had issued circulars. The Maharashtra Pollution Control Board had also issued circulars. Appellant's claim for grant of certificate was rejected in the year 1997. If the respondent No. 1 was aggrieved thereby, he could have filed an appropriate writ petition before the High Court immediately thereafter. He did not choose to do so. Only when the question of grant of promotion arose, he sought to get his claim of being promoted as a member of the Scheduled Tribe.

It was in that sense, it was obligatory on the part of the respondent No. 1 to question the validity of the circulars issued by the Maharashtra Pollution Control Board. A separate writ petition therefor should have been filed. The Maharashtra Pollution Control Board as also the Caste Scrutiny Committee was required to be impleaded therein. When the order dated 11.08.1988 was passed by the High Court, no Caste Scrutiny Committee existed. It came into force only after pronouncement of judgment of this Court in Kumari Madhuri Patil (supra).

The Maharashtra Government also enacted the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

We, therefore, reject the said contention.

30. The Maharashtra Pollution Control Board in its affidavit categorically stated that the appointment of the respondent No. 1 cannot be treated to be final as no caste certificate had been issued by the Statutory Committee.

31. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such a grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so.

We could have dismissed this application on the simple ground that the appellant has no locus standi. We did not do so because as a constitutional court we felt it to be our duty to lay down the law correctly so that similar mistakes are not committed in future. Apart from the general power of the superior courts vested in it under Article 226 or Article 32 of the Constitution of India, this Court is bestowed with a greater responsibility by the makers of the Constitution in terms of Articles 141 and 142 of the Constitution. Decisions are galore wherein this Court unhesitatingly exercised such jurisdiction to resort to the creative interpretation to arrive at a just result in regard to the societal and/ or public interest. We thought that it is a case of that nature.

32. We may notice that recently such a legal principle has been considered by this court in Indian Bank v. Godhara Nagrik Cooperative Credit Society Ltd. and Another [2008 (7) SCALE 363].

This Court, however, while laying down the law suitably mould the relief so as to do complete justice between the parties.

33. In Sandeep Subhash Parate v. State of Maharashtra and Others [(2006) 7 SCC 501], this Court in the matter of grant of relief applied the doctrine of proportionality directing:

"15. We do not find any lack of bona fides on the part of the appellant. He, it will bear repetition to state, got admission in the professional course as far back in the year 1998. For about the last three years, he had not been able to receive his degree of Engineering, although, he pursued his studies after he had passed class 12th examination. Just like medical education, the State also incurs a heavy expenditure in imparting other professional education like engineering. We, in the peculiar facts and circumstances of this case, are not inclined to go into the question as regards purported commission of fraud by the appellant, particularly, when the University admitted him without any demur whatsoever. We are doing so having regard to the doctrine of proportionality. The appellant has suffered a lot. He might not be entirely responsible therefor. He might have been under a bona fide belief that he comes within the purview of notified category. We, therefore, albeit with much reluctance accept the fervent and impassionate plea made by the learned counsel appearing for the appellant that he be allowed to obtain the degree. The same shall, however, be subject to payment of Rs1 lakh in favour of the State of Maharashtra so as to recompense the State to some extent the amount spent on him for imparting education as a reserved category candidate. Such payment must be made within three months from this date. On filing satisfactory proof of the deposit of such an amount, Respondent 4 shall immediately issue the degree in his favour. The appellant shall not claim any benefit flowing from the caste certificate obtained by him, which shall stand cancelled. In future, for all purposes he will be treated to be a person belonging to the general category."

34. In Union of India v. Dattatray S/o Namdeo Mendhekar and Others [(2008) 4 SCC 612], this Court held:

"5. Milind (supra)related to a Medical College admission. The question that arose for consideration in that case was whether it was open to the State Government or Courts or other authorities to modify, amend or alter the list of Scheduled Tribes and in particular whether the "Halba-Koshti" was a sub-division of 'Halba' Tribe. This Court held that it was not permissible to amend or alter the list of Schedule Tribes by including any sub-divisions or otherwise. On facts, this Court found that the respondent therein had been admitted in medical course in ST category, more than 15 years back; that though his admission deprived a scheduled tribe student of a medical seat, the benefit of that seat could not be offered to scheduled tribe student at that distance of time even if respondent's admission was to be annulled; and that if his admission was annulled, it will lead to depriving the

services of a doctor to the society on whom the public money had already been spent. In these peculiar circumstances, this Court held that the decision will not affect the degree secured by respondent or his practice as a doctor but made it clear that he could not claim to belong to a Scheduled Tribe. But the said decision has no application to a case which does not relate to an admission to an educational institution, but relates to securing employment by wrongly claiming the benefit of reservation meant for Schedule Tribes. When a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to scheduled caste/tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation."

We do not intend to do so in this case as the respondent No. 1 is in service for a long time and the Bombay High Court allowed the writ petition filed by him way back in 1988.

35. Invoking our jurisdiction under Article 142 of the Constitution of India, keeping in view the long history of the case and its backdrop, we are of the opinion that whereas it would not be proper for us to disturb the very appointment of the appellant but it must be declared that his appointment shall be treated to be that of a general category in the matter of promotion or otherwise. He shall not be eligible to get any benefit as a member of a Scheduled Tribe.

36. For the reasons aforementioned, the appeal is allowed with the aforementioned directions. In the facts and circumstances of the case, there shall be no order as to costs.