

SUPREME COURT OF INDIA

Collector, Bilaspur

Vs.

Ajit P.K.Jogi & Ors.

C.A.No.4069 of 2008

(R.V.Raveendran and H.L.Dattu, JJ.,)

13.10.2011

JUDGMENT

R.V.Raveendran, J.,

1. These four appeals by special leave are filed against the judgment dated 15.12.2006 of the Chhattisgarh High Court in WP No.2080 of 2011. As the ranks of parties differ, they are referred to by their ranks in CA No.4069/2008.

2. The first respondent (Ajit P.K. Jogi) claimed that he belonged to a tribal community known as 'Kanwar', a notified Scheduled Tribe. He obtained social status/caste certificates from time to time, showing him as belonging to Kanwar-Scheduled Tribe, that is, certificate dated 6.6.1967 from the Naib Tehsildar, Pendra Road, Bilaspur, certificate dated 27.2.1984 by the Naib Tehsildar, Pendra Road, Bilaspur, certificate dated 6.3.1986 by the Tehsildar, Pendra Road, certificate dated 12.1.1993 by the Naib Tehsildar, Pendra Road, Bilaspur, certificate dated 11.8.1999 by Naib Tehsildar, Indore, certificate dated 8.1.2001 from the Addl. Collector, Bilaspur and certificate dated 30.9.2003 by Addl. Collector, Bilaspur. The first respondent was elected twice to Rajya Sabha and contested two parliamentary elections from Raigarh and Shahdol constituencies. He successfully contested from Marwahi Vidhan Sabha constituency reserved for Scheduled Tribes in 1991. On 1.11.2000, when the State of Chhattisgarh came into existence, the first respondent became its first Chief Minister and served in that capacity till December, 2002.

3. In the year 2001, the sixth respondent filed a complaint before the National Commission for Scheduled Castes and Scheduled Tribes (the third respondent herein, for short 'Commission') alleging that the first respondent was a Christian and that he did not belong to a Scheduled Tribe; and that he had obtained several false caste certificates showing him as belonging to 'Kanwar' Scheduled Tribe and had contested elections from a constituency reserved for Scheduled Tribes. He requested that appropriate action be taken in that behalf.

4. The Commission issued a show cause notice to the first respondent proposing to verify his caste certificate. The Commission referred the complaint received from the sixth respondent

to the Chief Secretary, Government of Chhattisgarh on 29.1.2001. The state government (fourth respondent) responded to the Commission stating that it had constituted a committee dated 27.2.2001 for verification of caste certificates and the reference received from the Commission had been transmitted to the Principal Secretary, Department for Welfare of SCs, STs, OBCs and Minorities Welfare (fifth respondent) for necessary verification through the said Committee. The Commission thereafter summoned the Chief Secretary of Chhattisgarh to appear before the Commission on 24.1.2001 with all documents relating to the caste status of the Chief Minister (first respondent). The Commission summoned the Principal Secretary, Scheduled Castes and Scheduled Tribes Welfare Department to appear on 18.5.2011 with the records. He responded and made available the instructions issued by the state government relating to verification of caste certificates. He submitted that having regard to the provision made by the state government for verification of caste certificate by a scrutiny committee, the Commission did not have jurisdiction to verify the caste certificate issued to the first respondent. The Commission felt that there was want of co-operation from the Government of Chhattisgarh and instructed its branch at Bhopal to ascertain the correct position and verify the caste claim of the first respondent. Apparently, the Bhopal office collected some material to show that the first respondent belonged to Satnami caste (a backward class) and that he did not belong to Kanwar Scheduled Tribe and that he got elected as a MLA from a reserved constituency for Scheduled Tribes, based on a false caste certificate. On the basis of alleged material so collected, the Commission called upon the first respondent, vide notice dated 26.5.2001 to offer his explanation and also appear before the Commission on 30.9.2001 with necessary documents. One Mr. R. N. Sharma, Chief Legal Adviser to the Chief Minister of Chhattisgarh appeared on behalf of the first respondent and submitted a reply dated 12.9.2001 to the notice dated 26.5.2001. Several documents were furnished and written submissions were also filed.

5. The Commission made an order dated 16.10.2001. We extract below the preamble and operative portion of the said order :

"In the matter of : Verification of community certificate of Shri Ajit P.K. Jogi, S/o Shri K.P. Jogi, Village Sarbahra, Tehsil Pendra Road, District Bilaspur. xxxxx xxxxxx Taking into consideration the available evidence as discussed above, the commission is of the considered view that Shri Ajit P.K. Jogi has been fraudulently claiming to belong to Kanwar community for the purpose of getting ST certificate, although he and his ancestors belong to Satnami caste, which is included in the SC list of the State. However, as Shri Ajit P.K. Jogi's grandfather appears to have got converted to Christianity, he was not eligible for concessions/benefits available to SCs also. The state government is, therefore, called upon to conduct the verification of genuineness of the ST certificate obtained by Shri APK Jogi and to initiate urgent necessary action for cancellation of his ST certificate and also criminal action as provided in the law and the rules. A report on the action taken may be submitted to the Commission within 30 days."

6. The said order was challenged by the first respondent by filing WP No.2080 of 2001 in the Chhattisgarh High Court. A Division Bench of the High Court by the impugned order dated

15.12.2006 allowed the writ petition. It held that the complaint of the sixth respondent before the Commission questioning the social status of first respondent was politically motivated, that the first respondent had been openly claiming the status of a person belonging to a scheduled tribe, at least from the year 1967 and had obtained several certificates certifying his status and had contested several elections as a person belonging to a scheduled tribe, that his status was challenged before the Madhya Pradesh High Court in WP No.1417 of 1988 and WP No.1039 of 2001 and the said petitions had been dismissed and as the decisions of the High Court were judgments in rem, the Commission could not have ignored those judgments. The High Court also held that the Commission had violated the principles of natural justice as it had collected material behind the back of the first respondent and recorded adverse findings without disclosing the material collected by it to the first respondent and without giving an opportunity to the first respondent, to have his say on such material. The court also passed strong observations against the sixth respondent stating that the entire exercise was politically motivated. Consequently, it allowed the writ petition, quashed the entire proceedings of the Commission as also the findings in the order dated 16.10.2001 as being void and inoperative.

7. The High Court also directed the first respondent to pay cost of Rs.10,000/- to the first respondent. Further, it directed the State of Chhattisgarh and the Commission to file memo of calculations giving full details of the actual cost incurred by them in resisting the said writ petition and directed the sixth respondent to pay the said cost incurred by the State of Chhattisgarh and the Commission.

8. Feeling aggrieved by the said judgment, the State of Chhattisgarh has filed CA No.4082 of 2008, the Collector, Bilaspur has filed CA No.4069 of 2008, the sixth respondent filed CA No. 4079 of 2008 and four interveners in the High Court filed CA No. 4074 of 2008. On the contentions raised, the following questions arise for our consideration :

“(i) Whether the Commission had the jurisdiction to entertain complaints about the genuineness of caste certificate of a particular individual and pronounce upon the validity of the caste certificate and the caste status of such person?

(ii) Whether the High Court was justified in holding that in view of two earlier decisions of the High Court in WP No.1417 of 1988 decided on 24.7.1989 and WP No.1039 of 2001 decided on 24.7.2001, challenging the caste status of the first respondent, his caste status had attained some kind of finality.

(iii) Whether there was any violation of principles of natural justice on the part of the Commission as held by the High Court?

(iv) Whether the High Court was justified in holding that the proceedings before the Commission at the instance of sixth respondent were politically motivated?

Re : Question (i)”

8. Article 338 of the Constitution of India mandates the constitution of a National Commission for Scheduled Castes and Article 338A mandates the constitution of a National Commission for Scheduled Tribes. At the relevant point of time, that is in the year 2001, Article 338A was not in existence and the unamended Article 338 provided for a National Commission for Scheduled Castes and Scheduled Tribes. Clause (5) of unamended Article 338 enumerated the duties of the Commission, relevant portions of which are extracted below:

"(5) It shall be the duty of the Commission---

(a) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) To participate and advise on the planning process of socio- economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) To make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and;

(f) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the

recommendations relating to the State and the reasons for the non- acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating the matters referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause

(b) of clause 5, have all the powers of a Civil Court trying a suit and in particular in respect of the following matters, namely :--

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing summons/communications for the examination of witnesses and documents;

(f) any other matter which the President may by rule determine.”

9. The Union and every State Government shall consult the Commission on all major policy matters affecting and Scheduled Castes and Scheduled Tribes.

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(emphasis supplied)

10. The appellants and the Commission relied upon sub-clause (b) of clause (5) of Article 338 which provided that it shall be the duty of the Commission to enquire into specific complaints with respect to deprivation of rights and safeguards to scheduled castes and scheduled tribes, as the source of power to the Commission to enquire into and decide upon the caste status of any individual claiming to belong to a scheduled tribe. It was submitted that if persons not belonging to scheduled tribes falsely claim the status of scheduled tribes, they would thereby be depriving the rights and benefits available to genuine scheduled tribes and consequently, when a specific complaint is received alleging that any particular person had made a false claim of being a person belonging to a scheduled tribe, the Commission was duty bound to enquire into the such specific complaint as it related to deprivation of rights and safeguards of scheduled tribes. It was further argued that it had examined and decided upon the caste status of the first respondent, after examining the material collected by it and after giving an opportunity to the first respondent to prove that he belonged to a scheduled

tribe, and it had come to a conclusion that the first respondent had fraudulently claimed that he belonged to the scheduled tribe of Kanwar and had obtained false certificate to that effect; and that the first respondent was a Christian, who did not belong to a scheduled tribe and therefore, not eligible to enjoy the reservation and other benefits extended to scheduled tribes. It was also pointed out that the Commission had ultimately directed the State Government to conduct the verification of the genuineness of the ST certificate obtained by the first respondent and initiate action for cancellation of his ST certificate and consequently, initiate criminal action in accordance with law.

11. Dealing with the powers of a similar (State) Commission for Women, this Court in *Bhabani Prasad Jena vs. Orissa State Commission for Women*¹ held as under :

"Mr. Ranjan Mukherjee, learned Counsel for Respondent 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorized to decide these complaints. We are afraid, no such implied power can be read into Section 10(1)(d) as suggested by the learned Counsel. The provision contained in Section 10(1)(d) is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted the State Commission with the power to take up the role of a court or an adjudicatory tribunal and determine the rights of the parties. The State Commission is not a tribunal discharging the functions of a judicial character or a court."

12. Dealing with the powers of the Chief Commissioner and Commissioners under the persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act and the Rules thereunder, this Court in *State Bank of Patiala vs. Vinesh Kumar Bhasin*² held as follows:

"It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act."

13. It is evident from Article 338 as it originally stood, that the Commission was constituted to protect and safeguard the persons belonging to scheduled castes and scheduled tribes by ensuring : (i) anti- discrimination, (ii) affirmative action by way reservation and empowerment, and (iii) redressal of grievances. The duties under clause 5(b) of Article 338 did not extend to either issue of caste/tribe certificate or to revoke or cancel a caste/tribe certificate or to decide upon the validity of the caste certificate. Having regard to the sub-clause (b) of clause (5) of Article 338, the Commission could no doubt entertain and enquire

into any specific complaint about deprivation of any rights and safeguards of Scheduled Tribes. When such a complaint was received, the Commission could enquire into such complaint and give a report to the Central Government or State Government requiring effective implementation of the safeguards and measures for the protection and welfare and socio-economic development of scheduled tribes. This power to enquire into 'deprivation of rights and safeguards of the scheduled castes and scheduled tribes' did not include the power to enquire into and decide the caste/tribe status of any particular individual. In fact, as there was no effective mechanism to verify the caste/tribe certificates issued to individuals, this Court in *Madhuri Patil vs. Addl. Commissioner (Tribal Development)*³ directed constitution of scrutiny committees.

14. In *Madhuri Patil*, this Court held that on account of false social status certificates being obtained by unscrupulous individuals, and cornering the benefits meant for SCs and STs, persons who genuinely belonged to scheduled castes/scheduled tribes were denied the benefit of reservation in posts/seats and other benefits extended to SCs and STs. It therefore, felt that there was a need to streamline the procedure for issuance of social status certificate, their scrutiny and approval and issued the following directions :

"1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

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

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies,

method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed.....

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

xxxx xxxx"

This Court thus formulated a scheme for verification of tribal status and held that any application for verification of tribal status as a scheduled tribe should be carried out by such Committees. The verification of the validity of caste certificates and determination of the caste status should therefore be done by the Scrutiny Committees constituted as per the directions in Madhuri Patil or in terms of any statute made by the appropriate government in that behalf.

15. It is true that the Commission had ultimately directed the state government to conduct the verification of the genuineness of the scheduled tribe certificate obtained by the first respondent and to initiate action for cancellation of his scheduled tribe certificate and also criminal action as provided in law and submit an action taken report to the Commission within 30 days. But this is preceded by a very lengthy order which categorically records a finding that first respondent had secured a false certificate. The order starts with the following caption: "Verification of community certificate of Shri Ajit P.K.Jogi". The order discloses that it had summoned various senior officers of the State Government and the first respondent to produce the documents in regard to his caste status. The order further states that it had held independent inquiry through its State office to collect evidence to show that the first respondent belonged to Satnami caste and not to Kanwar community. The Commission has dealt with the objection that it had no jurisdiction to determine the caste status of an individual, referred to its duties and functions in detail and concluded thus :

"Thus the Commission is fully empowered to enquire into any complaint relating to bogus community certificate which would otherwise have the effect of depriving the genuine ST candidates from getting admissions to professional courses etc. or appointments to posts reserved for them or from election to the elected bodies from the constituencies reserved for them. Since its inception, the Commission has taken

up enquiries in thousands of cases of complaints of false caste certificates, either directly or through its State Offices or the concerned agencies of the State Governments and about 800 such cases are still pending with the Commission which are being pursued.

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It is therefore clear that the objections raised by the Respondent is not sustainable and the Commission is well within its rights to enquire into the matter to fine the genuineness of the ST certificate in possession of Shri APK Jogi, which enabled him to become an MLA from a constituency reserved for the STs."

The order then considers the material in great detail and records clear finding that the first respondent had obtained a false certificate, vide para 24 which is extracted below :

"Based on the evidence available before the Commission, it is clearly established that Late Shri Girdhari Jogi, while Shri Sinati Jogi and his progeny continued to claim the benefit of being SCs as Satnami caste, the grandfather of Shri A.P.K Jogi, Shri Dulare Jogi and his progeny converted to Christianity and thus became ineligible for the benefits available to the Scheduled Castes. (The genealogical tree of the family is enclosed for ready reference). However, Shri Ajit P. K. Jogi, by fraudulently claiming to belong to `Kanwar' community managed to get a ST certificate in 1967 from Additional Tehsildar, Pendra Road. This certificate was not registered in the Revenue records and was thus a legally invalid document Shri Ajit P. K. Jogi, who had subsequently joined Indian Police Service and Indian Administrative Service, used his influence to get the community certificate as ST and on his own admission, contented for parliamentary elections and Assembly elections from constituencies reserved for STs."

16. It is only after recording the said findings, the Commission directed the State government to verify the genuineness of the ST certificate obtained by first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub- clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case. The contention that there was sufficient material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed

above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16.10.2001.

Re : Questions (ii) to (iv)

17. This does not mean that the caste certificates of the first respondent are not to be verified. The appellants allege that among the certificates obtained by the first respondent, the certificates dated 6.6.1967 and 27.2.1984 were issued by the Naib Tehsildar, who at the relevant point of time did not have the authority to issue such certificates. With reference to the certificate dated 27.2.1984, it is also contended that the case number mentioned pertains to grant of an explosive licence to one Gokul Prasad. In regard to certificates dated 6.3.1986 and 12.1.1993, it is pointed out that no case number had been mentioned. In regard to the certificate dated 11.8.1999, it is pointed out that Naib Tehsildar at Indore, was not competent to issue such a certificate in regard to a resident of Pendra Road, Bilaspur. In regard to certificates dated 8.1.2001 and 20.9.2003 issued by the Additional Collector, Bilaspur, it is pointed out that the certificates are not in the required form and not in accordance with the relevant guidelines for issuance of certificates. It is also alleged that on 8.4.1977, the Addl. Tehsildar, Pendra Road had rejected the application of first respondent for issue of a certificate showing that he belonged to 'kanwar' Scheduled Tribe. It is also alleged that father and mother of first respondent had entered into sale transactions on 12.8.1964, 21.9.1967 and 25.7.1979 describing themselves as Christians and had not sought permission under section 165(6) of MPLR Code which was mandatory, if they were tribals. We have referred to these averments only to point out that serious allegations were made in regard to the certificates obtained by the first respondent and the tribal status claimed by him. The certificates have never undergone a scrutiny by a properly constituted authority. The fact that two writ petitions were filed at some point of time, challenging the claim of first respondent that he belongs to a scheduled tribe may not be conclusive as the first writ petition was dismissed on the ground that it involved disputed questions of fact which could not be gone into in a writ proceeding and the second writ petition was dismissed on the ground that investigation into the allegations of forged certificates was in progress. Therefore even though the Commission was not entitled to hold an inquiry and record a finding that first respondent did not belong to a scheduled tribe, having regard to clause 5(b) and (f) of Article 338, it had the power and authority to require the State Government or the caste verification Committee constituted by the State Government, to examine the caste status claimed by the first respondent. The correspondence initiated by the Commission clearly showed a request/direction for verification of the caste of the first respondent was made by the Commission and the state government had responded by stating that the claim of first respondent that he belonged to a scheduled tribe and the validity of social status certificates would be verified by the Scrutiny Committee.

18. The High Court was therefore not justified in holding that in view of the disposal of earlier writ petitions by the High Court, the dispute relating to tribal status of the first

respondent had attained some kind of finality. On the facts and circumstances, there was also no justification for the High Court to either term the application given by the sixth respondent to the Commission as politically motivated or direct the State Government and the Commission to calculate the actual expenses incurred in regard to the inquiry and recover the same from the sixth respondent. Conclusion

19. We therefore allow these appeals in part as under:

“(i) The order of the High Court dated 15.12.2006 to the extent it quashes the order dated 16.10.2001 of the Commission, is upheld.

(ii) The adverse observations by the High Court about the complaint by the sixth respondent, the inquiry by the Commission, and the stand of the State Government and the Collector before the High Court, being politically motivated, are set aside.

(iii) The direction to the State Government and the Commission to calculate the actual cost incurred in prosecuting the writ petition and directing the sixth respondent to pay the actual costs plus Rs.10,000 is set aside.

(iv) In terms of the direction of the Commission, the State Government through a duly constituted Scrutiny Committee shall now undertake the verification/scrutiny of the social status (tribal) certificates issued to the first respondent showing him as belonging to `Kanwar' Scheduled Tribe and decide the matter after giving due opportunity to the first respondent, uninfluenced by any observations by the Commission, High Court or this Court. The State Government/concerned authorities shall be entitled to take consequential action on the basis of the order/report of the Scrutiny Committee.

Judgment Referred.

¹(2010) 8 SCC 0633

²(2010) 4 SCC 0368

³(1994) 6 SCC 0241