SUPREME COURT OF INDIA

Chairman and Managing Director FCI

Vs.

Jagdish Balaram Bahira

C.A.No.8928 of 2015

(Jagdish Singh Khehar,CJI., N.V.Ramana and Dr.D.Y.Chandrachud,JJ.,)

06.07.2017

JUDGMENT

Dr D.Y.Chandrachud,J.,

1. Delay condoned in SLP (C) CC No.10889/2015.

2. Leave granted in the Special Leave Petitions.

A The perspective

3. The framers of the Constitution conceived of a policy of affirmative action to redress the social exclusion, economic deprivation and political alienation suffered by historically disadvantaged classes of Indian society. Reservation of posts in public employment and seats for admission in educational institutions and the setting apart of seats in electoral bodies was envisaged by the Constitution for the fulfilment of a constitutional aspiration of social justice to the Scheduled Castes and Tribes and to socially and educationally backward classes of citizens. In pursuit of the constitutional goal of substantive equality, reservations have been envisaged as a means of enabling members of beneficiary groups to realise, in a true sense, dignity, freedom and liberty which the Constitution guarantees as its basic philosophy. But the problem which has confronted legislatures, policy makers as well as courts (as enforcers of the rule of law) is a capture of the benefits of affirmative action programmes by persons who do not genuinely belong to the beneficiary groups. This kind of capture poses a serious dimension. When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on state policy. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits.

4. The batch of cases with which the court is confronted involves individuals who sought the benefit of public employment on the basis of a claim to belong to a beneficiary group which has, upon investigation been found to be invalid. Despite the invalidation of the claim to belong to a Scheduled Caste or, as the case may be, a Scheduled Tribe or backward community, the intervention of the Court is invoked in the exercise of the power of judicial review. The basis for the invocation of jurisdiction lies in an assertion that equities arise upon a lapse of time and these equities are capable of being protected either by the High Court (in the exercise of its jurisdiction under Article 226) or by this Court (when it discharges the constitutional function of doing complete justice under Article 142). The present batch of cases then raises the fundamental issue as to whether such equities are sustainable at law and, if so, the limits that define the jurisdiction of the court to protect individuals who have secured access to the benefit of reservation inspite of the fact that they do not belong to the caste, tribe or class for whom reservation is intended.

5. A large body of precedent has evolved both in the High Courts as well as in this Court in seeking to find answers to pleas raised by individuals that they are entitled to protection by a constitutional court, even after the invalidation of their caste or tribe claims. The decided cases reflect a profound awareness on the part of courts of the human element involved. Assessment of human consequences case by case has resulted in a conflicting line of approach, in the effort of the court to balance the letter of law with a sense of compassion. Since this Bench of three Judges is called upon to seek a median, through the body of judicial precedent, it is, at the outset, necessary to set out the fundamental values and vision which the court must pursue. Those values as well as the vision is charted out to the court by the Constitution and it is the Constitution which the court expounds. The constitutional policy of creating reservations subserves a high constitutional value of providing social redress and a life of dignity to castes, tribes and classes which were in a historical sense oppressed by a systemic pattern of social exclusion and human deprivation. The benefits which the Constitution has conferred on beneficiary groups cannot be dissipated by allowing others who do not belong to the designated castes or tribes to secure the benefit. Public employment is a significant source of social mobility. Access to education opens the doors to secure futures. As a matter of principle, in the exercise of its constitutional jurisdiction, the court must weigh against an interpretation which will protect unjust claims over the just, fraud over legality and expediency over principle. As the nation evolves, the role of the court must be as an institution which abides by constitutional principle, enforces the rule of law and reaffirms the belief that claims based upon fraud, expediency and subterfuge will not be recognised. Once these parameters are established with a clear judicial formulation individual cases should pose no problem. Usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous.

B. The regulatory regime : Madhuri Patil

6. On 24 February 1981, the Government of Maharashtra issued a G.R. which prescribed the procedure for obtaining (i)caste certificates from the Sub-divisional Officers; and (ii) validity certificates from a Scrutiny Committee.

7. In 1994, the systemic usurpation of benefits by persons who did not belong to the beneficiary groups came to the fore before this Court. There was before this Court, an urgent need expressed to set down a framework to regulate the grant of caste certificates and to scrutinise claims. The need for scrutiny and verification of caste claims was addressed in a judgment of this Court, speaking through a bench of two judges, in *Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development*[1]. The judgment was delivered on 2 September 1994. While emphasizing the need to ensure that claims to belong to a beneficiary group must be carefully scrutinized, this Court observed thus:

> "...13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquires by the Scrutiny Committee.." Id. at p. 254)

8. Detailed guidelines were formulated in the judgment of this Court for the constitution of committees by the State Governments for scrutinizing claims of candidates to belong to a Scheduled caste or tribe or, as the case may be, to a backward community designated for reservations. The directions issued by this Court envisaged the constitution of Vigilance Cells which would conduct local enquiries to determine the authenticity of a claim to belong to a designated caste or tribe. The court, among other things, issued the following directions:

> "13(14). In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament;
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> (15). As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution Concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post." (Id. at p. 256-257)

C.The Halba / Halbi controversy

9. The Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order 1950 provide in relation to each State a list of Scheduled Castes and Scheduled Tribes for the purpose of constitutional reservations. In the list of Scheduled Tribes for the State of Maharashtra, Entry 19 is :

"Halba, Halbi"

10. In the State of Maharashtra, the ambit of Entry 19 became a bone of Contention particularly with persons belonging to the Halba-Koshti community claiming to be a sub-tribe of the designated tribe. A Division Bench of the High Court spoke on the issue on 4 September 1985 in *Milind Sharad Katware Vs. State of Maharashtra*[2]. The Division Bench held that Halba-Koshti constituted a sub-division of the tribe "Halba-Halbi" under Entry 19 of the Scheduled Tribes Order, 1950. Halba-Koshtis were, in the view of the Division Bench, entitled to the status of a Scheduled Tribe on the ground that they were comprehended within a designated tribe namely, Halba-Halbi. In coming to this conclusion, the Division Bench opined that it is permissible to enquire whether a sub-division of a tribe which is not mentioned in the Scheduled Tribes Order, 1950 is nevertheless a part and parcel of a tribe which is designated.

11. Upon a challenge by the State of Maharashtra before this Court, the issue was referred to a Constitution Bench and eventually resulted in the judgment in *State of Maharashtra Vs. Milind*[3] . The Constitution Bench held that the Scheduled Tribes Order had to be read as it is; and no evidence could be let in to urge that a tribe or tribal community or its part constituted a part of a tribe which was specifically designated. In other words:

> "36...(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.
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> (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.
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> (3). A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

(4). It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342." (Id at p. 30-31)

The judgment of the Bombay High Court holding that Halba-Koshti formed a part of the designated scheduled tribe, Halba-Halbi was reversed. The declaration of law by this Court under Article 141, negated the position of law enunciated by the Bombay High Court. This was, it must be emphasised, not a case of prospective over-ruling.

12. The Constitution Bench in Milind dwelt on the dangers in allowing benefits which are reserved to designated castes and tribes being usurped by individuals who do not belong to them. Allowing the benefits which are reserved by Presidential orders issued under Articles 341 and 342 to be usurped by an imposter would negate the purpose of the reservation. This was succinctly emphasized in the following observations of the Constitution Bench:

"35....The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled tribes to have the benefits or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution." (id. at p. 30)

13. Milind Sharad Katware whose cause had travelled from the Bombay High Court in 1985 to this Court had, by the time that the Constitution Bench resolved the issue on 28 November 2000 qualified as a doctor. He claimed the benefit of equities which had intervened in the meantime. They were recognized in the ultimate directions which were issued by this Court in the following observations:

"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 practicing 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 practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having

> regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372 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." (Id.at p. 31)

The latter part of the above extract covered other cases before the court. Reading these observations there can be no manner of doubt that this Court took recourse to its constitutional power under Article 142 to protect benefits which had accrued to a candidate who had qualified as a doctor though with the caveat that he would not be entitled to claim the status of belonging to a Scheduled tribe in the future. The latter part protected, having regard to the passage of time and interim orders passed in the batch of cases, appointments and admissions which had become final. These directions were evidently under Article 142 of the Constitution.

D The legislation in Maharashtra

14. The legislature in the State of Maharashtra enacted the Maharashtra Scheduled Castes, 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. The legislation essentially takes care, for that state of the concerns that were expressed in the decision of this Court in Madhuri Patil by providing a statutory framework to regulate the issuance of caste certificates, scrutiny and verification of claims and the consequences to ensue upon the invalidation of a claim. The legislation received the assent of the President and was published in the gazette on 23 May 2001. By a notification dated 17 October 2001, the Act came into force from 18 October 2001, in terms of Section 1(2). Section 3 requires every person claiming to belong to a Scheduled caste or tribe, other backward class or any other designated tribe or community seeking to obtain public employment or an admission to an educational institution or contesting an electoral seat in a local authority or a co-operative society to apply for the issuance of a caste certificate to a competent authority named by the State Government. Section 4 empowers the competent authority to issue a caste certificate upon being satisfied of the genuineness of the claim. Section 6 requires the State Government to constitute Scrutiny Committees for the verification of caste certificates issued by the competent authorities constituted under Section 4(1). Sub-Section (2) of Section 6 requires the beneficiary of a caste certificate to submit an application to a Scrutiny Committee for the verification of the caste certificate and for issuance of a validity certificate. The appointing authority is similarly required by sub-Section (3) to make an application to the Scrutiny Committee to verify the caste certificate. Section 6 provides thus:

> "6. (1) The Government shall constitute by notification in the official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section

(1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribe (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed."

Section 7 provides for the confiscation and cancellation of "false certificates". Section 7 is in the following terms:

"7. (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any

(2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India."

Section 8 relates to the burden of proof and envisages that in any application for the issuance of a caste certificate by the competent authority; in any enquiry conducted

by the competent authority or Scrutiny Committee or appellate authority; and in the trial of any offence under the Act, the burden of proving that the person belongs to such caste, tribe or class shall be on the claimant - applicant. Section 10 provides for the consequence of the invalidation of a caste certificate and reads thus:

"10. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other backward Classes or Special Backward Category secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes, or secures any appointment in the Government, local authority or in any other Company or Corporation, owned or controlled by the Government or in any Government aided institution or Co-operative Society against a post reserved for such Castes, Tribes or Classes by producing a false Caste Certificate shall, on cancellation of the Caste Certificate by the Scrutiny Committee, be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said employment forthwith and any other benefits enjoyed or derived by virtue of such admission or appointment by such person as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered from such person as an arrears of land revenue.

(3) Notwithstanding anything contained in any Act for the time being in force, any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a Caste Certificate which is subsequently proved to be false shall also stand cancelled, on cancellation of such Caste Certificate, by the Scrutiny Committee.

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, co-operative society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

Section 11 deals with offences and penalties and provides thus :

"11.(1) Whoever, -
(a) obtains a false Caste Certificate by furnishing false information or filing false statement or documents or by any other fraudulent means ; or

(b) not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category secures any benefits or appointments exclusively reserved for such Castes, Tribes, or Classes in the Government, local authority or any other company or corporation owned or controlled by the Government or in any Government aided institution, or secures admission in any educational institution against a seat exclusively reserved for such Castes, Tribes or Classes or is elected to any of the elective offices of any local authority or Co-operative Society against the office, reserved for such Castes Tribes or Classes by producing a false Caste Certificate; Shall, on conviction, be punished, with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years or with fine which shall not be less than two thousand rupees or both.

(2) No court shall take cognizance of an offence punishable under this section except upon a complaint, in writing, made by the Scrutiny Committee or by any other officer duly authorized by the Scrutiny Committee for this purpose."

Offences punishable under Section 11 have been made cognizable and non bailable under Section 12. Section 13 imposes criminal penalties upon a person discharging the functions of a competent authority who intentionally issues a false caste certificate.

15. Legislative intervention in the State of Maharashtra by the enactment of 2000 puts into place a statutory framework covering the area from the issuance of caste / tribe certificates and traversing the scrutiny and verification of caste / tribe claims and withdrawal of benefits accruing upon a false claim. Stringent penalties are provided against violators by creating a regime of criminal offences which are punishable at law. An application for a caste certificate is required to be made to a designated authority constituted by the State Government. The competent authority has to be satisfied about the genuineness of the claim before it issues a caste certificate. Issuance of a caste certificate does not in itself conclude the level of scrutiny. The next stage of scrutiny is contemplated before the Scrutiny Committee which is conferred with a statutory status by the provisions of the Act. Section 6 mandates in sub-section (2) that a person who desires to avail of a benefit or concession provided to a designated caste, tribe or class must make an application well in time to the Scrutiny Committee for verification of the caste certificate and for the issuance of a validity certificate. Not only this, the appointing authority is obligated to move the Scrutiny Committee to conduct a verification of the caste certificate of a person who has been selected for appointment. Section 7 empowers the Scrutiny Committee either suo motu or otherwise to enquire into the correctness of a caste certificate and, if it is of the opinion that the certificate was obtained fraudulently, it shall cancel and confiscate it after furnishing a reasonable opportunity to be heard. Section 7 operates in respect of all caste certificates whether obtained before or after the commencement of the Act. If a caste certificate has been obtained falsely by a person either claiming himself or his children to belong to a designated caste, tribe or class, the Scrutiny Committee is empowered to cancel it upon an opinion formed that it was obtained fraudulently. The fact that a person belongs to a designated caste,

tribe or class is based on facts which are to the knowledge of the applicant and hence the burden of proof is placed on the claimant by Section 8.

16. The state legislature was evidently not content with a mere invalidation of a caste certificate which is founded on a false claim made by a candidate to belong to a designated caste, tribe or class. Section 6 (2) provides that a candidate who desires to obtain a benefit must apply well in time to the Scrutiny Committee for verification and similarly the appointing authority of a candidate who has been selected for appointment but has not obtained a validity certificate must apply to the Scrutiny Committee for verification. The legislature however was cognizant of the fact that by the time a scrutiny takes place before the Scrutiny Committee the candidate may have obtained the benefit of a concession reserved for a caste, tribe or class. As a matter of public interest, the legislation stipulates that the benefits which have been obtained on the basis of a false caste certificate shall be withdrawn upon the invalidation of the claim by the Scrutiny Committee. The ambit of Section 10 (1) extends, among other things, to an admission which is secured in an educational institution against a seat reserved for one of the designated castes, tribes or classes; an appointment in the government, local authority or corporation owned or controlled by the government or any government institution or co-operative society against a reserved post. A benefit which is obtained on the foundation of a false caste claim which has been invalidated is not permitted to be retained by the candidate. There is a legislative mandate that the benefit of an admission granted or an appointment to a post shall be withdrawn forthwith on the cancellation of a caste / tribe certificate. Any amount which is paid by way of scholarship, grant, allowance or financial benefits has to be recovered as arrears of land revenue. Sub-Section (3) of Section 10 contains a non-obstante provision as a result of which notwithstanding anything contained in any Act for the time being in force a degree, diploma or educational qualification acquired by a person after securing admission on the basis of a caste certificate which is proved to be false and is cancelled would also be invalid. Similarly, by sub-Section (4) a disqualification from holding an electoral office has been stipulated where a person has contested an election on the basis of a false caste certificate which is since cancelled by the Scrutiny Committee. To ensure that the stringent provisions made by it impose a sufficient deterrent, the legislature considered it fit in its wisdom to create offences and to impose criminal penalties in Section 11.

17. The consequences which emanate from the cancellation of a caste certificate are distinct. The first is the withdrawal of benefits secured on the basis of a claim to belong to a designated tribe, group or class which has been held to be invalid. This is of a civil nature by which the applicant is deprived of the benefits of a false caste certificate which is cancelled by the Scrutiny Committee. The second consequence is the liability to be subject to a criminal prosecution. This is a criminal liability arising from an offence created by the legislature.

E Precedent

18. Several decisions of this Court have considered whether a person who has secured the benefit of public employment or admission to an educational institution on a reserved quota

is entitled to retain the benefits obtained despite the invalidation of the claim to belong to the tribe or caste. In all such cases, equities are pressed in aid, chief among them being the lapse of time since the acquisition of benefits on the basis of a claim to belong to a designated caste or tribe. As decided cases indicate, the claim for equity is coupled with a "voluntary" undertaking that the person would not secure or claim any future benefits on the basis that he or she belongs to the Scheduled Caste, Schedule Tribe or socially and educationally backward class on the basis of which the original appointment or admission was obtained. In the case of admissions to educational institutions, particularly institutions of higher learning, the additional ground which is often urged is that the withdrawal of benefits obtained in the past would amount to a societal loss since scarce productive resources of the nation are invested in providing for training and education to professionals in a discipline such as medicine.

19. In Madhuri Patil (supra), a Bench of two learned Judges set down a principled rationale as to why a claim for equity by a person who is not found to belong to the designated caste, tribe or class cannot be countenanced. The Court observed:

> "16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and wary in considering such cases." (Id. at p. 257)

However, on the facts of that case the Bench of two Judges while upholding the cancellation of the status of Mahadeo Koli which was fraudulently obtained, directed that the student who had completed the course of medical studies be allowed to appear for the final year examination of the M.B.B.S. degree course but not as a candidate belonging to a Scheduled Tribe. The circumstance which weighed with the Court was that the student had approached the High Court for the grant of a caste certificate since the Additional Commissioner was not dealing with the matter. The student obtained admission pursuant to a direction of the High Court. It was the parents of the student who had put the career of the student in jeopardy and

since she had completed her course of study except to appear for the examination; she should be permitted to do so. The above directions were issued in the case of one of the two appellants, Suchita Laxman Patil. However, her sister Madhuri (who was the first appellant) was found to have approached an officer without jurisdiction and after showing the order of the High Court in the case of her sister Suchita, secured a caste certificate and got admission. This Court observed that though she was in the midst of her B.D.S. studies in the second year, she could not continue as a student belonging to Mahadeo Koli Scheduled Tribe. She could only obtain admission as a general candidate and continue her studies. These directions are referable to the jurisdiction conferred on this Court under Article 142.

20. The next decision which is of relevance on the issue, is a judgment of three Judges of this Court in *R. Vishwanatha Pillai Vs. State of Kerala*[4]. In that case the appellant who did not belong to a designated reserved community obtained a caste certificate and was selected as a Deputy Superintendent of Police on a seat reserved for the Scheduled Castes. However, it was found upon a complaint that the appellant did not belong to a Scheduled Caste and the Scrutiny Committee rejected his claim. The order of the Scrutiny Committee was upheld by the High Court and by this Court. Subsequently at the behest of the appellant the Central Administrative Tribunal directed that he should not be terminated from service without following the procedure under Article 311. The High Court reversed that decision and the appellant was dismissed from service. Before this Court the appellant inter alia sought protection since he had rendered nearly 27 years of service. Rejecting the submission this Court held that:

> "15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India, Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India, As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the

Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

(Id. at p. 115) (emphasis suppled)

The Bench of three Judges also rejected the submission that since the appellant had rendered 27 years of service, the order of dismissal should be substituted with an order of compulsory retirement or removal to protect his pensionary benefits. The Court observed:

"19 The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eyes of law. The right to salary or pension after retirement flow from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste thus depriving the genuine Scheduled Caste of appointment to that post does not deserve any sympathy or indulgence of this Court. A person who, seeks equity must come with clean hands. He. who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud." (Id. at p. 116)

21. In *Bank of India Vs. Avinash D. Mandivikar*[5] the first respondent obtained an appointment in the service of the bank in October 1976 on a post reserved for the Scheduled Tribes. The Scrutiny Committee found that he did not belong to a Scheduled Tribe and, therefore, invalidated the caste certificate. Following the termination of his services the first respondent moved the High Court which accepted his plea that the initiation of proceedings against him by the Scrutiny Committee for verification of the caste certificate in 1987 was beyond a reasonable period. The High Court, while allowing the plea, reinstated him in service with back-wages. In an appeal by the employer, this Court held that once a claim of the employee to belong to a Scheduled Tribe had been rejected, the employment was "no appointment in eye of law" and that he had "absolutely no justification for his claim" in respect of the post he usurped. Distinguishing the directions issued in Milind (under Article 142), this Court held that:

"10.The protection under the Milind's case (supra) cannot be extended to the respondent No. 1-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent No.1-employee in the present case is a bank employee and the factor which weighed with this Court cannot be applied to him." (Id. At p.698)

The above observations of the court are also an indication that para 38 of the decision in Milind was construed as consisting of directions issued under Article 142. For it was on that basis that the court in Avinash Mandivikar held that no case was made out for protecting the services of a bank employee who had obtained employment on the basis of a false claim. Besides, this Court also held that the first respondent having perpetrated a fraud, a claim for protection will not be legally sustainable and a person who had obtained employment by illegitimate means could not continue to enjoy the fruits of the appointment despite the clear finding by the Scrutiny Committee that "he does not even have a shadow of a right even to be considered for appointment". This Court relied upon the earlier decision in Vishwanatha Pillai (supra) in coming to its conclusion.

22 Another decision of two learned Judges was in Additional General Manager/Human Resources, *Bharat Heavy Electricals Ltd. Vs. Suresh Ramakrishna Burde*[6] where a Division Bench of the Bombay High Court had ordered reinstatement subject to the condition that the employee would not stake a claim to belong to the Scheduled Tribe in future. The claim of the employee to belong to the Halba Scheduled Tribe was invalidated by the Scrutiny Committee. The employee had been appointed in May 1982 to a clerical post and in August 1995 the Scrutiny Committee had invalidated the caste claim initially and again in August 2001 following an order of remand. A Writ Petition filed against the order of invalidation was withdrawn but thereafter, relying on the observations in the concluding paragraph in Milind (supra) the employee submitted a representation for the protection of his services. After the representation was rejected, the employee moved the High Court which directed his reinstatement but with the condition that he would not claim the benefit of belonging to a Schedule Caste in future. While construing the decision in Milind (supra) (upon which the High Court had placed reliance), this Court observed as follows:

"7. The High Court has granted relief to the respondent and has directed his reinstatement only on the basis of the Constitution Bench decision of this Court in State of Maharashtra v. Milind (2001) 1 SCC 4. In our opinion the said judgment does not lay down any such principle of law that where a person secures an appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed if he gives an undertaking that in future he and his family members shall not take any advantage of being member of a caste which is in reserved category. The questions which required consideration by the Constitution Bench, are noted in the very first paragraph of the judgment and they are being reproduced below:

1) Whether at all, it is permissible to hold enquiry and let in evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950?

2) Whether Halba Koshti' caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to State of Maharashtra, even though it is not specifically mentioned as such?

8. After thorough discussion of the matter the conclusions of the Bench are recorded in paragraph 36 of the report. It was held that it is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950. It was further held that the notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament and it is not open to the State Governments or courts or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342 and the Constitution (Scheduled Tribes) Order 1950. The law declared by the Constitution Bench does not at all lay down that where a person secures an appointment by producing a false caste certificate, his services can be protected on his giving an undertaking that in future he will not take any advantage of being a member of the reserved category." (Id. at p. 340-341)

(emphasis supplied)

In this view of the matter, the High Court was held to be in error in setting aside the order of termination and in directing reinstatement of the employee.

23. A Bench of two Judges of this Court in *State of Maharashtra Vs. Sanjay K. Nimje*[7] considered a case where the respondent had been appointed to the service of the state in June 1995 on a claim that he belonged to the Halba Scheduled Tribe. The Scrutiny Committee upon verifying the caste certificate found in its order of August 1989 that the employee was a Koshti (a Special Backward Class) and not a Halba. The respondent accepted the findings of the Scrutiny Committee but on the basis of a Government Resolution dated 15 June 1995 sought the protection of his service. This Court noted that on 7 December 1994 Koshtis were declared to be a Special Backward Class. As regards the G.R. dated 15 June 1995, this Court came to the conclusion that since the respondent was appointed on 29 June 1995, which was after the G.R., he was not entitled to protection in terms thereof. Moreover, adverting to Section 10 of the Act enacted by the Maharashtra state legislature, this Court observed that:

"16. The 2000 Act being a legislative Act would prevail over any government resolution. A government resolution may be beneficent in nature but it is well settled

that a benefit under a government resolution cannot be extended to a person who does not satisfy the conditions precedent thereof. In any event, the effect of the judgment of this Court as also the provisions of a statute in the light of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India cannot be diluted by reason of a government resolution or otherwise." (Id. at p. 487)

(emphasis supplied)

In the view of this Court:

"18. We may also notice that ordinarily a person, who has obtained appointment on the basis of a false certificate, cannot retain the said benefit. (See Bank of India v. Avinash D. Mandivikar [(2005) 7 SCC 690 : 2005 SCC (L&S) 1011] , Ram Saran v. IG of Police, CRPF [(2006) 2 SCC 541 : 2006 SCC (L&S) 351 : (2006) 2 Scale 131] and Supdt. of Post Offices v. R. Valasina Babu [(2007) 2 SCC 335] .) In a situation of this nature, whether the Court will refuse to exercise its discretionary jurisdiction under Article 136 of the Constitution of India or not would depend upon the facts and circumstances of each case. This aspect of the matter has been considered recently by this Court in Sandeep Subhash Parate v. State of Maharashtra [(2006) 7 SCC 501: (2006) 8 Scale 503] ." (Id. at p. 487)

Finally this Court held that the provisions of Maharashtra Act XXIII of 2001 must apply. Though at one point in time indulgence had been shown to students or to persons who were found to have acted bona fide this "would not mean that this Court would pass an order contrary to or inconsistent with the provisions of a legislative act".

24. The position in law was reaffirmed in a subsequent decision of a Bench of three Judges in *Union of India Vs. Dattatray*[8]. The respondent was appointed as an Assistant Professor of Psychiatry in a government hospital on the strength of a claim to belong to a Scheduled Tribe. The Scrutiny Committee in an order of March 1999 found that the claim that he belonged to the Halba Tribe was false. The High Court upheld the invalidation of the tribe claim but held that the respondent would not be entitled to any benefit as a member of the Scheduled Tribe from the date of its decision. In consequence, the services of the respondent were directed not to be disturbed. This Court held that the High Court had misconstrued the decision of the Constitution Bench in Milind (supra) and adverted to the peculiar circumstances in which protection was granted in that case to a student who had been admitted to a medical course over 15 years ago. Distinguishing that decision with the case at hand this Court observed that:

"5. 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." (Id at p. 614)

(emphasis supplied)

The judgment of the High Court directing the continuance of the first respondent in service was accordingly set aside.

25. In *Yogesh Ramchandra Naikwadi Vs. The State of Maharashtra*[9], the direction contained in paragraph 38 of the decision of the Constitution Bench in Milind (supra) for protecting a student who had completed his medical studies, when nearly 15 years had elapsed, was held to be referable to the power conferred upon by this Court by Article 142 of the Constitution. This Court observed:

> "7. There may however be cases where it will not be proper to permit the student to retain the degree obtained by making a false claim. One example is where the candidates secure seats by producing forged or fake caste certificates. There may be cases, where knowing full well that they do not belong to a Scheduled Tribe/Caste, candidates may make a false claim that they belong to a Scheduled Tribe/Caste. There may also be cases where even before the date of admission, the caste certificates of the candidates might have been invalidated on verification by the Scrutiny Committee. There may be cases where the admissions may be in pursuance of interim orders granted by courts subject to final decision, making it clear that the candidate will not be entitled to claim any equities by reason of the admission. The benefit extended in Milind [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] and Vishwanatha Pillai [(2004) 2 SCC 105 : 2004 SCC (L&S) 350] cannot obviously be extended uniformly to all such cases. Each case may have to be considered on its own merits. Further what has precedential value is the ratio decidendi of the decision and not the direction issued while moulding the relief in exercise of power under Article 142 on the special facts and circumstances of a case. We are therefore of the view that Milind [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] and Vishwanatha Pillai [(2004) 2 SCC 105 : 2004 SCC (L&S) 350] cannot be considered as laying down a proposition that in every case where a candidate's caste claim is rejected by a Caste Verification Committee, the candidate should invariably be permitted to retain the benefit of the admission and the consequential degree, irrespective of the facts." (Id at p. 654) (emphasis supplied)

In the case at hand, though the Scrutiny Committee had rejected the claim of the appellant even prior to his admission to the professional degree course in engineering, the High Court had directed by an interim order the grant of provisional admission. This Court observed that since the admission to an engineering course had been obtained nearly 13 years earlier and the candidate had already secured a degree, he should be permitted to retain the benefit of the degree subject to the condition that he would not claim any further benefit as a member of a Scheduled Tribe and any expenditure incurred in terms of an exemption from the fee or a grant of scholarship, would be recovered. The following decisions of this Court, the act of obtaining a benefit reserved for designated castes, tribes and classes by an individual who does not belong to the designated community, on the basis of a false caste claim has been held to constitute an egregious violation, even a fraud on the Constitution:

> "(i) In *Anjan Kumar Vs. Union of India & Ors*[10] this court held that:

"14...A person not belonging to the Scheduled Castes or Scheduled Tribes claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste certificate and obtaining appointment/admission from the reserved quota will have far-reaching grave consequences. The meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. The reserved post will go into the hand of non-deserving candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution of India."

(ii) In *State of Maharashtra & Ors. Vs. Ravi Prakash Babulalsing Parmar & Anr*[11]-, this court observed thus:

"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."

(iii) Similar observations are contained in the judgment of this court in *Regional Manager, Central Bank Vs. Madhulika Guru Prasad Dahir*[12]-:

"13.It would suffice to state that except in a few decisions, where the admission/appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains appointment for the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of the said categories, of appointment to that post, does not deserve any sympathy or indulgence of this Court. He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour "

26. We may now advert to a line of precedent, upon which reliance has been placed by the private party claimants, to indicate the circumstances in which recourse has been taken by this Court to its jurisdiction under Article 142. *Sandip Subhash Parate Vs. State of Maharashtra*[13], is a decision of a Bench of two Judges of this Court. The claim of the appellant to belong to the Halba Scheduled Tribe formed the basis of his admission to the B.E. degree course at the University of Pune. The claim was invalidated by the Scrutiny Committee. In a writ petition challenging the order of the Scrutiny Committee the appellant

had the benefit of an interim order. Eventually the Writ Petition was allowed and the proceedings were remanded to the Scrutiny Committee. The Scrutiny Committee on remand rejected the claim against which another writ petition was filed. Though no interim relief was granted in the writ petition the appellant was allowed to continue with his studies and he completed engineering studies in 2004. Both the Writ Petition and the Review Petition before the High Court were dismissed. On these facts, the bench of two judges held that prima facie the case of the appellant indicated that he was under a bona fide belief that Koshti - Halbas were members of a Scheduled Tribe particularly since he had obtained admission prior to the decision in Milind (supra). Hence in the exercise of its jurisdiction under Article 142 the Bench observed that it did not find any lack of bona fides on his part. The decision then holds that:

> "15...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 plan 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 Rs 1 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." (Id at p. 507)

27. In *Central Warehousing Corporation Vs. Jagdishkumar Vithalrao Panjankar*[14], decided on 16 January 2007, a Bench of two Judges of this Court in the exercise of its jurisdiction under Article 142 protected the services of the respondent who had worked from 1984 on the strength of a claim to belong to the Halba Scheduled Tribe though it was found that he was a Koshti. A similar protection has been granted in *State of Maharashtra Vs. Om Raj*[15] by a Bench of two Judges where admission, or as the case may be, appointment to a service was obtained on the basis of a claim to belong to the Halba Scheduled Tribe though the individuals concerned were found to be Koshti. The decision dealt with a batch of cases which were held to be covered by Milind.

28. The long tenure of an employee was pressed in aid in a judgment of a Bench of two Judges of this Court in *Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar*[16] as a ground for the exercise of the jurisdiction under Article 142. In that case the first respondent was, on the strength of a Scheduled Tribe certificate of August 1987, employed in the State Pollution Control Board and his status as a member of a Scheduled Tribe was confirmed in a decision of the High Court in August 1988. The Scrutiny Committee, however, invalidated the claim of the respondent to belong to the Halba Scheduled Tribe. However, the High Court held that its earlier decision of August 1988 had attained finality and that the status of the first respondent could not be questioned again. This Court by its judgment held that when an advantage is obtained by a person in violation of the constitutional scheme a constitutional

fraud is committed. The earlier decision of the High Court which was rendered without a factual foundation was held not to operate as res judicata. However, since the Bombay High Court had allowed the writ petition filed by the respondent in 1988 and he had continued in service since long, recourse was taken to the jurisdiction under Article 142, to protect his service albeit on the basis that he belongs to the general category. The benefit of the protection of service was again granted by a Bench of two judges in *Punjab National Bank Vs. Vilas Govindrao Bokade*[17]−. A similar protection has been extended in *Vijaykumar Vs. State of Maharashtra*[18] , *Damodhar Vs. Secretary, Industrial. Energy & Labour Department*[19], *Raiwad Manojkumar Nivruttirao Vs. State of Maharashtra* [20] and *Dattu Namdev Thakur Vs. State of Maharashtra*[21].

29. A decision rendered by this Court in 2012 in the case of *Kavita Vasant Solunke Vs. State of Maharashtra*[22] involved a situation where the appellant applied for the post of a teacher in a high school which was reserved for a Scheduled Tribe claiming to be a Halba. She was appointed on probation in August 1995 and was confirmed in service. The proceeding before the Scrutiny Committee revealed that the appellant was a Koshti by caste and not a Halba as a result of which the caste certificate was cancelled. This led to the termination of the services of the appellant on 23 February 2008. The School Tribunal dismissed the appeal filed by the appellant on 28 September 2008 and the writ petition before the High Court resulted in an order of rejection. This Court held that the Scrutiny Committee had not found that the caste certificate was false, fabricated or manipulated or that the Scrutiny Committee found any fraud, fabrication or misrepresentation. In the circumstances, this Court directed that the services of the appellant be protected but that she would not be entitled to any further benefits on the basis of the caste certificate cancelled by the Scrutiny Committee:

> "22. Applying the above to the case at hand we do not see any reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the matter of appointment as a teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual condition that the appellant shall not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years after its issue cancelled by the Scrutiny Committee." (Id. At p. 440)(emphasis supplied)
>
> This decision of two learned judges does not indicate that the provisions of Maharashtra Act XXIII of 2001 were noticed.

30. The issue was revisited in another decision of two judges in *Shalini Gajananrao Dalal Vs. New English High School Association*[23]. The appellant obtained a certificate of belonging to the Halba Scheduled Tribe in July 1974. On the strength of a claim that the Gadwal Koshti caste (to which she belonged) had consanguinity to the Halba Scheduled Tribe, she was appointed as an Assistant Teacher and was confirmed in 1984. She was promoted as a Head Mistress in 1994. The Scrutiny Committee in August 2003 held that the caste certificate

obtained by the appellant was invalid. A learned Single Judge of the High Court granted protection in service on the strength of a G.R. dated 15 June 1995. Thereafter protracted litigation ensued which eventually resulted in a Single Judge of the High Court setting aside the order of reinstatement passed by the School Tribunal. This order was confirmed in appeal by a Division Bench of the High Court. Summarising the position which emerged from earlier decisions of two judges, this Court has held that:

> "7.1. If any person has fraudulently claimed to belong to a Scheduled Caste or Scheduled Tribe and has thereby obtained employment, he would be disentitled from continuing in employment. The rigour of this conclusion has been diluted only in instances where the court is confronted with the case of students who have already completed their studies or are on the verge of doing so, towards whom sympathy is understandably extended.
>
> 7.2. Where there is some confusion concerning the eligibility to the benefits flowing from Scheduled Caste or Scheduled Tribe status, such as issuance of relevant certificates to persons claiming to be "Koshtis" or "Halba-Koshtis" under the broadband of "Halbas", protection of employment will be available with the rider that these persons will thereafter be adjusted in the general category thereby rendering them ineligible to further benefits in the category of Scheduled Caste or Scheduled Tribe as the case may be.
>
> 7.3. This benefit accrues from the decision of this Court inter alia in Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar [(2008) 9 SCC 54 : (2008) 2 SCC (L&S) 802] which was rendered under Article 142 of the Constitution of India. Realising the likely confusion in the minds of even honest persons the Resolutions/Legislation passed by the State Governments should spare some succour to this section of persons. This can be best illustrated by the fact that it was in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] that the Constitution Bench clarified that "Koshtis" or "Halba-Koshtis" were not entitled to claim benefits as Scheduled Tribes and it was the "Halbas" alone who were so entitled. A perusal of the judgment in Vilas[Punjab National Bank v. Vilas, (2008) 14 SCC 545 : (2009) 2 SCC (L&S) 143] by Sirpurkar, J., as well as Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] makes it clear that this protection is available by virtue of the decisions of this Court; it is not exclusively or necessarily predicated on any Resolution or Legislation of the State Legislature." (Id. at pgs. 533-534) The High Court in that case had while rejecting the claim of the appellant relied upon the decision of three Judges in Dattatray (supra). However, this Court held that the decision in Dattatray cannot be construed to have overruled earlier decisions of two Judges. In that context this Court has held that:
>
> "8. A reading of the impugned judgment [Shalini v. New English High School Assn., LPA No. 527 of 2009, order dated 25-11-2009 (Bom)] requires us to clarify an

important aspect of the doctrine of precedence. Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] is the only three-Judge Bench decision, and therefore indisputably holds pre-eminence. However, by that time several decisions had already been rendered by two-Judge Benches some of which have already been discussed above. It was within the competence of Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] Bench to overrule the other two-Judge Benches. Despite the fact that it has not done so the per incuriam principle would not apply to the decision because it was a larger Bench. However, no presumption can be drawn that the Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] three-Judge Bench decision was of the opinion that the earlier two-Judge Bench decisions had articulated an incorrect interpretation of the law. That being so, the two-Judge Bench views may still be relied upon so long as the ratio of Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] is not directly in conflict with their ratios. It is therefore imperative to distil the ratio of Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612: (2008) 2 SCC (L&S) 6] , which we have already discussed in some detail. We need only reiterate therefore that the three-Judge Bench was perceptibly incensed with the falsity of the claim of the employee to Scheduled Caste/Scheduled Tribe status. That was not a case where a legitimate claim of consanguinity to a "Halba-Koshti", "Koshti" or "Gadwal Koshti", etc. had been made, which was at the inception point considered to be eligible to beneficial treatment admissible to Scheduled Tribes, later to be reversed by the Constitution Bench decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] and declared to be the entitlement of Halbas only." (Id. at p. 534)

In the view of this Court, Section 10 of the Act cancels any benefit which may have been derived by a person on the basis of a false caste certificate. Explaining the ambit of the provision, the Court has held that :

"11 Whilst "Caste Certificate" has been defined in Section 2(a) of the 2000 Act, "False Caste Certificate" has not been dealt with in the Definitions clause. There is always an element of deceitfulness, in order to derive unfair or undeserved benefit whenever a false statement or representation or stand is adopted by the person concerned. An innocent statement which later transpires to be incorrect may be seen as false in general sense would normally not attract punitive or detrimental consequences on the person making it, as it is one made by error. An untruth coupled with a dishonest intent however requires legal retribution. It appears to us that Section 10 applies in Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612:(2008) 2 SCC (L&S) 6] mould only." (Id. at p. 536)

The above extract indicates that this Court has in Shalini imported a requirement of dishonest intent, before the withdrawal of benefits mandated by Section 10 of the State legislation can take effect.

Since there was no falsity in the claim of the appellant, the Court held that Section 10 would not apply to her case. The appellant was accordingly reinstated without any back-wages subject to the condition that she would not be entitled to any further promotion as a Scheduled Tribe candidate.

31. In *R. Unnikrishnan Vs. V. K. Mahanudevan*[24] the respondent applied for the grant of a Scheduled Caste certificate on the basis that he was a Thandan which was a notified Scheduled Caste. The Tahsildar found that the respondent did not belong to the Scheduled Caste in question. In the course of writ proceedings, the High Court directed the Tahsildar to issue a caste certificate following which the respondent was appointed as an Assistant Executive Engineer in a Special Recruitment Drive for Scheduled Caste/ Scheduled Tribe candidates. Subsequently, following the decision of a Full Bench of the Kerala High Court, the caste certificate of the respondent came under scrutiny and it was found that the respondent actually belonged to the Ezhuva community which fell in the OBC category. The respondent challenged the enquiry proceedings in a Writ Petition. The High Court quashed the enquiry. The Division Bench of the High Court in appeal directed a fresh enquiry into the caste status of the respondent. A fresh enquiry resulted in the finding that the claim of the respondent to belong to a Scheduled Caste was invalid. Following the order of the High Court the State Government held that the respondent did not belong to a Scheduled Caste but belonged to a community which was designated as an OBC and if any benefits have been obtained on a wrongful basis, they would be recovered. Both the learned single Judge of the Kerala High Court and in appeal the Division Bench held that the caste status of the respondent had already attained finality and could not be reopened. This Court observed that in *Palghat Jilla Thandan Samudhaya Samrakshna Smithi Vs. State of Kerala*[25], it had held that the Thandan community being listed in the Scheduled Castes Order 1950, it was not open to the State to embark upon an enquiry whether a section of Ezhuva / Thiyya which was called Thandan in the Malabar area was excluded from the benefits of the Order. This Court noted that by an amendment of 2007 to the Constitution Scheduled Castes Order, Ezhuvas and Thiyyas in the erstwhile Cochin and Malabar areas are no longer Scheduled Castes with effect from 30 August 2007 and would no longer be entitled to be treated as a Scheduled Caste nor will the benefits of reservation be admissible. However, after adverting to the decisions in Milind, Kavita Solunke and Sandeep Parate this Court held that:

> "41. In the instant case there is no evidence of lack of bona fides by the respondent. The protection available under the decision of Milind case [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] could, therefore, be admissible even to the respondent. It follows that even if on a true and correct construction of the expression "Thandan" appearing in the Constitution (Scheduled Castes) Order, 2007 did not include "Ezhuvas" and "Thiyyas" known as "Thandan" and assuming that the two were different at all relevant points of time, the fact that the position was not clear till the Amendment Act of 2007 made a clear distinction between the two, would entitle all those appointed to serve the State up to the date the amending Act came into force, to continue in service." (Id. at pgs. 453-453)

32. We may also at this stage advert to a judgment of two learned judges of this Court in *B. H. Khawas Vs. Union of India*[26]. In that case, the appellant was appointed as a Chemical Engineer Grade-I in the Customs and Central Excise Department in June 1995 against a vacancy reserved for a Scheduled Tribe. The letter of appointment provided that the appointment was provisional and subject to verification of the caste certificate. His services were terminated in 2004 following a decision of the Scrutiny Committee that he belonged to the Koshti which is not a Scheduled Tribe in the State of Maharashtra. The appellant submitted a representation on the receipt of the order of the Scrutiny Committee claiming that he had not furnished false information and the caste certificate was obtained by him bona fide on the basis of the school record. The appellant also claimed that the issue as to whether the Koshti caste is a part of the Halba Scheduled Tribe was the subject matter of intense debate until it was resolved on 28 November 2000 by the Constitution Bench in Milind (supra). Eventually he moved the Central Administrative Tribunal which directed that the appointment of the appellant which was made prior to the decision in Milind (supra) should be protected. When the decision of the Tribunal was assailed, the Division Bench of the High Court relied on the decision in Dattatray (supra) and restored the order of termination dated 8 June 2004. In appeal before this Court, it was urged that the decision of the Constitution Bench in Milind (supra) protected aN appointments which had become final. This Court observed that in paragraph 38 of the decision of the Constitution Bench in Milind it has been made clear that "the admissions and appointments that have become final, shall remain unaffected by this judgment". The appointment of the appellant as Chemical Engineer Grade-I was, it was held, provisional and subject to the verification of his caste claim. It was not treated as being final by the department till the order of termination was issued. Since the appointment was made on a provisional basis subject to the verification of the caste certificate it was held that the appellant was not entitled to the protection of his service. Both the earlier decisions in Kavita Solunke and in Shalini were distinguished on the ground that in the former the appointment had attained finality and could not be disturbed while in the subsequent decision also, the appointment as an Assistant Teacher had attained finality and she had been confirmed in service. Similarly in Unnikrishnan the Court was held to be dealing with a matter where the caste claim was already a subject matter of challenge before the Court and had been upheld. In this background, this Court in Khawas held as follows:

> "14. In none of the cases pressed into service by the appellant, the appointment, as in this case, was on provisional basis and subject to verification of caste certificate through proper channel. It necessarily follows that the principle expounded in the three decisions referred to above, can have no application to the case on hand. Indubitably, if the argument of the appellant was accepted, it would inevitably mean that all appointments made before 28-11-2000 must be protected even though it had not become final. That would also mean that all caste certificates issued to persons belonging to Koshti community, as being Halba Scheduled Tribe in Maharashtra, prior to 28-11-2000 (the day on which Milind case [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] was decided by the Constitution Bench), have been validated irrespective of the opinion of the Scrutiny Committee qua those

certificates. That cannot be countenanced. For caste Koshti is neither a synonym nor part of a notified Scheduled Tribe Halba in Maharashtra." (Id. at p. 721)

Following this principle, it was held that the appellant was not entitled to any relief on the finding that his appointment as Chemical Engineer had not attained finality. Once the Scrutiny Committee held that the appellant did not belong to the Halba community the High Court was held to be justified in allowing the writ petition filed by the Department. The order of termination was hence restored. The decision of this Court in Khawas specifically rejects the submission that the decision of the Constitution Bench in Milind would protect all appointments made before 28 November 2000 even though they were not final. If the appointment was yet to be subject to scrutiny by the Caste Scrutiny Committee it would evidently not have attained finality prior to the date of the judgment in Milind (supra).

F Decisions of the Bombay High Court

33. In *Ramesh Suresh Kamble v. State of Maharashtra*[27], a Full Bench of the Bombay High Court consisting of Mr Justice R M Lodha (as the learned Chief Justice then was), Mr Justice S A Bobde (as the learned Judge then was) and Mr Justice S B Deshmukh considered the provisions of Maharashtra Act XXIII of 2001, particularly Sections 7(1) and 10(1) in the context of the electoral disqualification of a Councillor elected under the Mumbai Municipal Corporation Act following the invalidation of the caste certificate. After adverting to the decision of an earlier Full Bench in *Sujit Vasant Patil Vs. State of Maharashtra*[28], the Full Bench held thus:

"24....The inquiry under section 7(1) of Maharashtra Act No. XXIII of 2001 by the Caste Scrutiny Committee is focussed on the correctness of the Caste Certificate obtained by such person from the Competent Authority. The, Caste Certificate is issued by the Competent Authority on the application made by the concerned person disclosing certain information. If the Caste Certificate is cancelled by the Caste Scrutiny Committee, it obviously means that the Caste Certificate has been obtained by that person from the Competent Authority on incorrect facts or erroneous representation. It is not necessary that such claim or declaration must involve turpitude of mind. There may not be any deliberateness in it. The failure on the part of the candidate to establish his caste claim before the Scrutiny Committee and the declaration that the Certificate obtained from the Competent Authority is invalid and thereby cancelled leads to necessary inference that such person made a false claim of his caste belonging to the reserved category to which he did not belong and, thus, incurring disqualification under section 16(1C)(a)." (Id at p. 438) (emphasis supplied)

Again, in the view of the Full Bench :

> "26. A candidate who sets up a claim as belonging to a particular caste by making an application to the Competent Authority and obtains the Caste Certificate based on such claim and information and contests the election of the Councillor from the reserved seat and gets elected and if, ultimately, the Scrutiny Committee upon inquiring into the correctness of such certificate declares such certificate invalid and cancels the same, it is obvious that such Caste Certificate has been obtained by that person on the basis of the declaration or information or claim which was not correct or true and upon invalidation and cancellation of the Caste Certificate by the Scrutiny Committee, such person incurs disqualification automatically. There is no escape from it." (Id. at p. 438)

Another Full Bench of the Bombay High Court in *Ganesh Rambhau Khalale Vs. State of Maharashtra*[29] held that the directions which were issued by the Constitution Bench of this Court in paragraph 38 of its decision in Milind were in exercise of the power conferred by Article 142 of the Constitution.

34. A Division Bench of the Bombay High Court in *Priyanka Omprakash Panwar Vs. State of Maharashtra*[30] has construed the provisions of Section 10 of Maharashtra Act XXIII of 2001 in holding thus:

> "3....The balance between the equitable consideration of protecting the interest of a student who has pursued his education and the public interest in protecting the reserved categories against the usurpation of their constitutional entitlements by imposters has now been made by the State Legislature. . The Legislature has expressly stipulated that a degree or diploma obtained on the basis of a caste claim which is invalidated shall stand cancelled. In the face of an express legislative provision, this Court shall not be justified in exercising its equitable jurisdiction. Considerations of equity that guide the Court in constitutional adjudication under Article 226 of the Constitution must be in accordance with the law enacted by the Legislature. . Stringent provisions have been made to protect the Scheduled Castes, Scheduled Tribes and other reserved categories. To dilute those provisions by importing equitable considerations for a candidate who has usurped benefits would be to defeat the law. The legislation was in this case conceived in the interests of protecting the constitutional scheme of reservations from usurpation by those who are not entitled."
>
> (Id. at p. 848)

This decision has been followed in a subsequent decision in *Apurva Ashok Gokhale Vs. State of Maharashtra*[31].

35. In *Arun Vishwanath Sonone Vs. State of Maharashtra*[32], two questions were referred for decision to a Full Bench of the Bombay High Court:

"1. Whether the relief of protection of service after invalidation of the caste claim can be granted by the High Court on the basis of the judgment of the Hon'ble Supreme Court in Kavita Solunke v. State of Maharashtra and other, 2012(5) Mh. L.J. (S.C) 921 = 2012 (8) SCC 430 ?...

2. If the answer to question No. 1 is in the affirmative, can such relief of protection of service be granted by the High Court in a case where the same relief has been earlier refused by the High Court?" (Id at p. 465)" The Full Bench has held that a caste certificate whether issued prior to or after the coming into force of Maharashtra Act XXIII of 2001 is valid subject to verification and the grant of a validity certificate by the Scrutiny Committee. The Full Bench has taken the view that Section 10 of the State Act regarding the withdrawal of benefits secured on the basis of a false caste certificate operates with effect from 18 October 2001. Section 10, in the view of the High Court is "essentially penal in nature" and shall have no effect on the benefits secured or an appointment obtained prior to the coming into force of the enactment. Hence, the view of the High Court is that :

"27....The consequences of discharge from employment or withdrawal of benefits secured or obtained by producing a false caste certificate shall not operate in respect of benefits or appointments obtained or secured prior to coming into force of the said Act." (Id. at p. 475)

The Full Bench has taken the view that the observations of this Court in *Shalini Gajananrao Dalal Vs. New English High School Association*[33] impliedly overruled the earlier judgments of the Full Benches of the High Court in Sujit Vasant Patil and Ganesh Rambhau Khalale (supra). In the view of the Full Bench an innocent statement made by error should not in the absence of an element of deceitfulness operate to deprive a candidate of the benefits obtained on the foundation of a false certificate. The Full Bench held, following decision of this Court in Kavita Solunke, that:

"From the decision of the Apex Court in Kavita Solunke's case, it can be gathered that the protection granted in Milind's case would not be available where any fraud or any fabrication or any misrepresentation is made with a view to obtain an undeserved benefit in the matter of appointment. If there is no accusation that the certificate was false, fabricated or manipulated by concealment or otherwise, the refusal of benefit flowing from the decision in Milind's case may not be justified."

The judgment of the Full Bench also holds that the directions which were issued by the Constitution Bench in Milind are in two parts - the first being to save the admission and degree secured while the other is of a general nature invoking the doctrine of prospective overruling to save admissions and appointments that have become final. Hence, according to the Full Bench, the ratio of the earlier Full Bench judgment in Ganesh Rambhau Khalale holding that the clarificatory directions in Milind were referable to Article 142 would run

contrary to the decisions in Kavita Solunke and Shalini and would cease to be a binding precedent. Consequently, the first question which was referred to the Full Bench has been answered in the affirmative by holding that the relief of the protection of services after the invalidation of a caste claim can be granted by the High Court on the basis of the decisions of this Court in Kavita Solunke and Shalini. G Submissions

36. In the present batch of cases, the almost uniform facet is that the claim to belong to a reserved category has been rejected upon scrutiny.

37. On behalf of the persons whose caste or tribe claims have been rejected, the following submissions have been urged:

> "(i) The issue with regard to caste certificates granted prior to 28 November 2000 is not res integra in view of the dictum laid down in paragraph 38 of the judgment of this Court in Milind. The decision in Milind gave a positive direction to the effect that appointments that had become final on or before 28 November 2000 (the date when the judgment was delivered) shall remain unaffected. The Constitution Bench dealt with appointments as well as admissions to educational institutions. Following the decision in Milind this Court disposed of several cases relating to Halba-Koshti and did not disturb appointments which had been made prior to 28 November 2000. The directions in Milind are based on the doctrine of prospective overruling;
>
> (ii) No issue was joined before the High Court to the effect that the provisions of Maharashtra Act XXIII of 2001 are retrospective and would interdict admissions or appointments made prior to the enforcement of the Act. In any case such a stand would be contrary to the binding circulars issued by the State Government; and
>
> (iii)Maharashtra Act XXIII of 2001 is not retrospective in operation. The statute being of a penal nature, it cannot be construed to be retrospective since that would render it violative of Article 20(1) of the Constitution. The Act was notified on 17 October 2001 with effect from 18 October 2001 which is the relevant date under Section 1 (2).
>
> (iv)While Section 7 empowers the Scrutiny Committee to cancel any certificate which has been obtained before or after the commencement of the Act, the expression "before or after the commencement of this Act" is absent in Sections 10 and 11. Consequently, though Section 7 may be retroactive in operation, Sections 10 and 11 which relate to the withdrawal of benefits ard in regard to penal offences are prospective. Besides the above submissions it has also been urged that in so far as Halba-Koshtis are concerned:
>
> (i) Though in Entry 19 of the Scheduled Tribes Order, 1950 only " Halba-Halbi" has been recognised as a Scheduled Tribe, until the decision of the Constitution Bench in Milind, Halba - Koshtis were "socially and officially" recognized and accepted as a sub-tribe of Halba-Halbi. This may have been as a result of the judicial

pronouncement made by the High Court from 1956 or the circulars issued by the State Government;

(ii) It was on 28 November 2000 that the Constitution Bench in Milind held that Halba - Koshtis do not fall within the purview of Entry 19 of the Scheduled Tribes Order, 1950. Hence, it cannot be said that a caste certificate issued at any time prior to 28 November 2000 in favour of a citizen who was a Halba Koshti was false or a fraud and it can only be held that such a person ceased to be recognized as Halba-Halbi Scheduled Tribe;

(iii) Section 11 of Maharashtra Act XXIII of 2001 which is in the nature of a penal provision will not be applicable to caste certificates which were issued prior to 18 October 2001;

(iv) On 15 January 1995, a government resolution was issued by the Government of Maharashtra that appointments made prior to that date against reserved posts would remain protected even if the caste/tribe claim of the appointee was invalidated or found to be false;

(v) Where an appointment in service has been acquired by practicing fraud or deceit such an appointment is no appointment in law and in such a situation Article 311 of the Constitution is not attracted. This position will not be applicable to claimants of the Halba - Koshtis caste to whom caste certificates were issued and appointments were made prior to 28 November 2000; and

(vi) On 10 August 2010, the Union Government in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training issued an office memorandum to the effect that persons belonging to the Halba, Halbi / Koshti castes who got appointment against a vacancy reserved for the Scheduled Tribes on the basis of certificates issued by the competent authority and whose appointments have been rendered final prior to 28 November 2000 shall not be affected.

(vii) On 21 October 2015, the State of Maharashtra issued a circular directing that employees who have been appointed against posts reserved for Scheduled Tribes in government services between 15 January 1995 and 17 October 2001, whose claims have been invalidated, shall not be disbanded/terminated until further orders. In view of this circular, the State Government is estopped from challenging the Full Bench decision of the High Court in Arun Sonone.

H PART II : Analysis

38. Having put together the body of material on the subject, including the precedents and legislation governing the area, the stage for analysis is now reached. That is what this judgment now seeks to embark upon.

39. The backdrop for the decision in Madhuri Patil (supra) was provided by the significant scale on which benefits were secured by imposters by passing themselves off as members of castes, tribes and classes for whom reservations have been earmarked pursuant to constitutional provisions. By its directions which this Court issued on 2 September 1994 provision was made for the constitution of committees for verification of claims belonging to a designated caste, tribe or class. This Court explained the modalities to be followed by the Scrutiny Committees and the manner in which action would be taken if a claim was found to be false. The directions which were issued by this Court envisaged that upon a claim being found to be false or spurious:

> "(i) the Caste Scrutiny Committee should pass an order cancelling and confiscating the certificate;
>
> (ii) the cancellation of the certificate should be communicated to the educational institution where the candidate has been admitted or to the appointing authority where the candidate is employed;
>
> (iii) upon this, the head of the institution or the appointing authority should cancel the admission or appointment without further notice and debar the candidate from further study or continuance in office; and
>
> (iv) a prosecution should be launched against the candidate or, as the case may be, the parents or guardians responsible for making the false claim. The regime postulated in the judgment of this Court in Madhuri Patil (supra) took effect from 2 September 1994, which was the date of the judgment. Eventually in the State of Maharashtra these directions received legislative recognition upon the enactment of the Maharashtra Act XXIII of 2001 which came into force in the State on 18 October 2001. However, it is important to notice that even before the State Legislature stepped in to confer a statutory form to the directions which were issued by this Court in Madhuri Patil (supra) the regime, as it then obtained prior to the enactment of the law, also envisaged consequences upon a caste or tribe claim being found to be false upon a verification by the Scrutiny Committee. The cancellation of a certificate would, as a necessary consequence, involve the invalidation of the appointment to a post or admission to an educational institution. Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong.

The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained. The same principle would apply where a candidate secures admission to an educational institution on the basis of a false claim to belong to a reserved category. A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter a detriment is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended. This was the position under the regime which prevailed following the decision in Madhuri Patil.

40. The Constitution Bench of this Court which decided Milind (supra) was on a reference whether it is permissible to hold an enquiry and let in evidence to decide or declare that any tribe or tribal community or a part or group within the tribe or community is included in the general name, even though it is not so specifically mentioned in the entry contained in the Constitution (Scheduled Tribes) Order, 1950. The Constitution Bench held that it was not permissible either to hold an enquiry or to allow evidence to decide that though a tribe (or its sub group) is not specifically included in the Scheduled Tribes Order, 1950 it must, nonetheless, be treated or deemed to be included in the general name. The view of this Court is that an entry in the Order has to be read as it stands. However, the Constitution Bench in paragraph 38 of its decision, having due regard to the circumstances of the individual cases before the Court, protected the degree obtained by the candidate concerned. This Court also provided that having regard to the passage of time including interim orders which were passed, the admissions and appointments that have become final would remain unaffected by the judgment. The observations in paragraph 38 of the decision of the Constitution Bench have been construed in at least the following judgments of this Court as directions referable to Article 142 of the Constitution:

"(i) *Bank of India Vs. Avinash D.Mandivikar*[34]*;*

(ii) *Additional General Manager- Human Resource, Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde*[35]*–*;

(iii) *Union of India Vs. Dattatray, S/o. Namdeo Mendhekar*[36]*–* ; and

(iv) *Yogesh Ramchandra Naikwadi Vs. State of Maharashtra*[37].

41. Since the decision of the Bench of three judges in R. Vishwanatha Pillai Vs. State of Kerala (supra) the position of law which has been laid down by this Court is that where an appointment to a post or admission to an educational institution is made against a vacancy which is reserved for a Scheduled Caste or Tribe or a socially and educationally backward class, the invalidation of the claim of the candidate would result in the appointment or, as the case may be, the admission being void and non est. This principle has been followed by another judgment of three Judges in Dattatray (supra). The same position has been propounded by a two judge bench in Bank of India Vs. Avinash Mandivikar (supra). The formal termination of an employment or the withdrawal of admission is a necessary consequence which flows out of the invalidation of the caste or tribe claim. The only exception to this principle consists of those cases where, in exercise of the power conferred by Article 142, the Court considered it appropriate and proper to protect the admission which was granted or, as the case may be, the appointment to the post.

42. In Kavita Solunke (supra) the appellant had been appointed on the strength of a claim to belong to the Halba Scheduled Tribe in August 1995. After the tribe claim was verified by the Scrutiny Committee it was found that the appellant was in fact a Koshti and not a member of the Halba Scheduled Tribe following which an order of termination was issued. The sole ground on which the termination was challenged and which was accepted by the bench of two judges was that since the appointment of the appellant had attained finality, it could not have been set aside on the ground that the appellant did not belong to a Scheduled Tribe. Maharashtra Act XXIII of 2001 was evidently not placed before the court in Kavita Solunke (supra) and has not been noticed. Upon the enactment of the Act, the invalidation of a caste certificate by the Scrutiny Committee would as a statutory mandate result in the withdrawal of the benefits which had accrued on the strength of the claim and where a candidate had been appointed to a reserved post, termination would follow the finding that the candidate did not belong to the category for whom the post was reserved. If the provisions of Maharashtra Act XXIII of 2001 were to be considered by the bench of two judges, it would be apparent that under the provisions of Section 7 the Scrutiny Committee is empowered to verify a caste certificate whether issued before or after the commencement of the Act and if it comes to the conclusion that the caste certificate is false and is obtained fraudulently it is empowered to order its cancellation and confiscation. Section 10 provides for the withdrawal of benefits secured when a caste certificate is concerned for its falsity. Falsity is adjudicated upon when an order of cancellation is passed under Section 7. Once a caste certificate is cancelled by the Scrutiny Committee under Section 7, the individual affected by the order has a remedy to challenge its cancellation before the High Court under Article 226. If the challenge fails or if the challenge is given up, and the only relief sought is of the protection of service, or of the admission to the course, the grant of such protective relief simpliciter would be impermissible. The withdrawal of the benefit under Section 10 follows an order of cancellation under Section 7. Once the conditions for cancellation are fulfilled and an order of cancellation is passed under Section 7 withdrawal of all benefits which have accrued on the basis of the claim (which stands invalidated) cannot be opposed on a theory that there was an absence of dishonest intent.

43. The rationale which weighed with the Bench of two Judges which decided Kavita Solunke (supra) was that if the Halba Koshti had been treated as Halba even before the appellant had joined the service and if the only ground for ouster was the law declared in Milind (supra), there was no reason why protection against ouster to appointees whose applications had become final be not also extended to the appellant. Placing reliance on the decision in Kavita Solunke (supra) another Bench of two Judges of this Court in Shalini (supra) propounded a test of dishonest intent for the grant or denial of protection to persons whose caste claims had been invalidated. The view of the Court emerges from the following extract contained in para 9 of the decision which reads thus:

> "9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with the Scheduled Castes or Scheduled Tribes, etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe." (Id.at pgs. 534-535)
>
> The above observations must be read together with those in paragraph 11 (extracted earlier) where the Court held that a dishonest intent requires legal retribution. In Shalini (supra) the Court noticed the provisions of Section 10 of Maharashtra Act XXIII of 2001 (which the earlier decision in Kavita Solunke (supra) had not noticed) but nonetheless held that in order to attract the provisions of Section 10 a dishonest intent for the purpose of claiming a benefit reserved for the Scheduled Castes or Tribes or a designated backward class is necessary. The expression "false" contained in Section 10 of the Maharashtra Act XXIII of 2001 is construed to necessarily require the presence of mens rea or a dishonest intent."

44. The object and purpose underlying the enactment of the state legislation is to regulate the issuance of caste certificates and to deal with instances which had come to light where persons who did not belong to the Scheduled Castes or Tribes or reserved categories were seeking appointments or admissions to the detriment of genuine candidates. The basic purpose and rationale for the legislation is to secure the just entitlements of legitimate claimants. The judgment in Shalini (supra) is with respect in error in imputing the requirement of a dishonest intent into the provisions of Section 10. Sections 7 and 10 have to be construed in harmony. Section 7 provides for the cancellation of a caste certificate where

before or after commencement of the Act, a person who does not belong to a reserved category has obtained a false caste certificate and the Scrutiny Committee, after enquiry, is of the opinion that the certificate was obtained fraudulently. These requirements have to be fulfilled before the certificate is cancelled. The falsity of the caste certificate and the opinion of the Scrutiny Committee of its being fraudulently obtained form the basis of a cancellation under Section 7. Section 10 prescribes that a person who does not belong to a reserved category and secures admission or obtains appointment against a reserved post by producing a false caste certificate shall upon its cancellation by the Scrutiny Committee be debarred from the institution or as the case may be discharged from employment and the benefits derived shall be withdrawn. Sub-section (2) provided for the recovery of all financial benefits while sub-section (3) provides for the cancellation of a degree, diploma or educational qualification. Sub-section (4) provides for disqualification from electoral office. The falsity of the certificate is the basis of an order under Section 7. Section 10 provides the consequence. The challenge to an order of the Scrutiny Committee (invalidating a caste or tribe certificate) may fail or succeeds. If the challenge before the High Court succeeds, no question of the consequence under Section 10 arises. If the challenge fails, the consequence under Section 10 follows the finding in the order under Section 7 that the certificate is false. Similarly, if the order under Section 7 is not challenged, or if the challenge is given up, there is no occasion to protect the benefits secured on the basis of a certificate which is invalidated. The expression "false" must be construed in contra-distinction to that which is true, genuine or authentic. Falsity in this sense means the setting up of a claim to belong to a reserved category.

45. Section 10, it must be noted, provides for the withdrawal of civil benefits which have accrued to an individual on the strength of a claim to belong to a reserved category, when the claim upon due enquiry and verification is invalidated. Section 10, as its marginal note indicates, provides for the withdrawal of benefits secured on the basis of a false caste certificate. Section 11 provides for offences and penalties. The invalidation of a caste certificate may result in two consequences : (i) immediate cancellation or withdrawal of the benefits received by the candidate on the basis of a false caste certificate; (ii) prosecution of a claimant who procures a certificate which is found to be false by the Scrutiny Committee. The intent of a candidate may be of relevance only if there is a prosecution for a criminal offence. However, where a civil consequence of withdrawing the benefits which have accrued on the basis of a false caste claim is in issue, it would be contrary to the legislative intent to import the requirement of a dishonest intent. In importing such a requirement, the bench of two Judges in Shalini (supra) has, with great respect, fallen into error. The judgment in Shalini (supra) must, therefore, be held not to lay down the correct principle. In the very nature of things it would be casting an impossible burden to delve into the mental processes of an applicant for a caste certificate. As the provisions of the Act indicate, a person, who claims to belong to a reserved category and who seeks the benefit of an appointment to a reserved post or of admission to an educational institution against a reserved seat or any other benefit provided by the provisions of Article 15(4), has to apply for the grant of a caste certificate. The burden of proof that he or she belongs to such a caste, tribe or class lies with the claimant. The legislature has legitimately assumed that a person who seeks a caste

certificate must surely be aware of the caste, tribe or class to which he or she belongs and must establish the claim. If the claim to belong to the reserved category is found to be untrue, the caste certificate has to be cancelled on the ground that it has been obtained falsely. The grant of the benefit to the candidate is fraudulent because the candidate has obtained a benefit reserved exclusively for a specified caste, tribe or class to which he or she is not entitled. The decision in Shalini (supra) would result in serious consequences and would eviscerate the statutory provision. The interpretation which has been placed on the provisions of Section 10 by the judgment in Shalini (supra) is evidently incorrect.

46. Service under the Union and the States, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 and 16 to follow the principle of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims. The selection of ineligible persons is a manifestation of a systemic failure and has a deleterious effect on good governance. Firstly, selection of a person who is not eligible allows someone who is ineligible to gain access to scarce public resources. Secondly, the rights of eligible persons are violated since a person who is not eligible for the post is selected. Thirdly, an illegality is perpetrated by bestowing benefits upon an imposter undeservingly. These effects upon good governance find a similar echo when a person who does not belong to a reserved category passes of as a member of that category and obtains admission to an educational institution. Those for whom the Constitution has made special provisions are as a result ousted when an imposter who does not belong to a reserved category is selected. The fraud on the constitution precisely lies in this. Such a consequence must be avoided and stringent steps be taken by the Court to ensure that unjust claims of imposters are not protected in the exercise of the jurisdiction under Article 142. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilised to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. Once the legislature has stepped in, by enacting Maharashtra Act XXIII of 2001, the power under Article 142 should not be exercised to defeat legislative prescription. The Constitution Bench in Milind spoke on 28 November 2000. The state law has been enforced from 18 October 2001. Judicial directions must be consistent with law. Several decisions of two judge benches noticed earlier, failed to take note of Maharashtra Act XXIII of 2001. The directions which were issued under Article 142 were on the erroneous inarticulate premise that the area was unregulated by statute. Shalini noted the statute but misconstrued it.

47. Cooley's Treatise on Constitutional Limitations places the matter succinctly in the following terms :

"An officer de jure is one who, possessing the legal qualifications, has been lawfully chosen to the office in question, and has fulfilled any conditions precedent to the performance of its duties. By being thus chosen and observing the precedent conditions, such a person becomes of right entitled to the possession and enjoyment of the office, and the public, in whose interest the office is created, is entitled of right to have him perform its duties. If he is excluded from it, the exclusion is both a public offence and a private injury."

In a recent judgment of this Court in *Anurag Kumar Singh Vs. State of Uttarakhand*[39], it has been held that judicial discretion can be exercised only when there are two or more possible lawful solutions. Courts cannot give a direction contrary to a statute in the purported exercise of judicial discretion. The power under Article 142 of the Constitution is one which is wielded with circumspection and not in a manner which would defeat statutory intent, purpose and language. Aharon Barak in his book titled "Judicial Discretion (1989)" states thus:

"16 Discretion assumes the freedom to choose among several lawful alternatives. Therefore, discretion does not exist when there is but one lawful option. In this situation, the Judge is required to select that option and has no freedom of choice. No discretion is involved in the choice between a lawful act and an unlawful act. The Judge must choose the lawful act, and he is precluded from choosing the unlawful act. Discretion, on the other hand, assumes the lack of an obligation to choose one particular possibility among several." (Id at p. 430)"

48. The Full Bench judgment of the Bombay High Court in Arun Sonune (supra) has essentially construed the judgments in Kavita Solunke (supra) and in Shalini (supra) as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale and Ramesh Kamble. In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two Judge Benches in Kavita Solunke (supra) and Shalini (supra), we are unable to subscribe to the view expressed by the Full Bench in Arun Sonone (supra). The judgment of the Full Bench of the Bombay High Court in Arun Sonone (supra) holds that

"(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind (supra) on 28 November 2000;

(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms. The High Court has even gone to the extent of holding that the decision in Milind (supra) was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly

unsustainable. Neither the judgment in Milind (supra) nor any of the judgments of this Court which have construed it have held that Milind (supra) was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun Sonone (supra) is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself."

49. We do not find any merit in the submission which has been urged on behalf of the persons whose castes/ tribes claims have been invalidated that Maharashtra Act XXIII of 2001 cannot apply to admissions or appointments which were made prior to the date on which the Act came into force.

50. The submission based on retrospectivity overlooks certain crucial links in the analysis. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. However, the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Equally the rule against retrospective construction is not applicable to a statute merely because a part of the requisites for its action is drawn from a time *antecedent to its passing*[40]. Maharashtra Act XXIII of 2001 provides in Section 1 (2) that it shall come into force on such dates as the State Government may, by notification in the official gazette, appoint upon receiving assent of the President. The Act was notified to come into force by a government notification dated 17 October 2001 with effect from 18 October 2001. Prior to the enforcement of the Act, the regime which held the field was in terms of the directions that were issued by this Court in its judgment dated 2 September 1994 in Madhuri Patil. The directions which were issued by this Court comprehended:

"(i) Applications for the grant of caste certificates being made to a notified officer;
(ii) Submission of an affidavit together with relevant particulars in support of the application;

(iii) Submission of an application for verification of the caste certificate before a Scrutiny Committee well in advance of seeking admission to an educational institution or appointment to a post;

(iv) Grant of provisional admission or a provisional appointment where the verification by the Scrutiny Committee was likely to take time;

(v) Constitution of Scrutiny Committees for verification of caste certificates;

(vi) Constitution of Vigilance Cells for the purpose of investigating the social

status of the candidate and affinity with the tribal group;

(vii)Modalities to be followed for revoking caste certificates when the claim for social status was found to be not genuine, doubtful, spurious or falsely or wrongly claimed;

(viii) Passing of an order of cancellation and confiscation of the caste certificate if the claim was found to be false;

(ix) Prosecution of the candidate or, as the case may be, the parent or the guardian who had made a false claim;

(x) Cancellation of the admission granted or the appointment made where the caste certificate is invalidated and debarment of the candidate from further studies or to continue in a post."

51. The regime which obtained since 2 September 1994 under the directions in Madhuri Patil was granted a statutory status by the enactment of Maharashtra Act XXIII of 2001. Section 7 provides for the cancellation and confiscation of a false caste certificate whether it was issued before or after the commencement of the Act. The expression "before or after the commencement of this Act" indicates that the Scrutiny Committee constituted under Section 6 is empowered to cancel a caste certificate whether it was issued prior to 18 October 2001 or thereafter. Section 10 which provides for the withdrawal of benefits secured on the basis of a false caste certificate which is withdrawn is essentially a consequence of the cancellation of the caste certificate. Where a candidate has secured admission to an educational institution on the basis that he or she belongs to a designated reserved category and it is found upon investigation that the claim to belong to that category is false, admission to the institution necessarily falls with the invalidation of the caste certificate. Admission being founded on a claim to belong to a specified caste, tribe or class, it is rendered void upon the claim being found to be untrue. The same must hold in the case of an appointment to a post. Therefore, the absence of the words "before or after the commencement of this Act" in Section 10 makes no substantive difference because a withdrawal of benefit is an event which flows naturally and as a plain consequence of the invalidation of the claim. Moreover, as we have seen even prior to the enactment of the state legislation, the benefit which was secured on the basis of a caste claim was liable to be withdrawn upon its invalidation. The Act has hence neither affected vested rights nor has it imposed new burdens. The Act does not impair existing obligations in Sections 7 and 10. However, an analysis of the provisions of Section 11 demonstrates that the provision creates offences and provides for penalties. Under Section 11 (1) (a) the offence consists of obtaining a false caste certificate (by furnishing false information), filing a false statement or document or by any fraudulent means. Under Section 11 (1)(b) the offence consists in securing a benefit exclusively reserved for designated castes, tribes or classes by a person who does not belong to that category in terms of

"(i) Appointment;

(ii) Admission in an educational institution against a reserved seat; or

(iii) Election to a local authority or cooperative society against an office which is reserved for that category."

52. The provisions of Section 11 (1) must be read and construed in a prospective sense having regard to the guarantee contained in Article 20 (1) of the Constitution. The offence having been created by Maharashtra Act XXIII of 2001, the Act which constitutes the offence must relate to a period after the date of the enforcement of the Act. In terms of the penal provisions of Section 11, the statute in so far as it creates offences and provides for penalties must hence be construed prospectively.

53. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that government is bound by its own circulars is well-settled but it cannot apply in a situation such as present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.

54. One of the considerations which is placed in store before the court particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiorari. In our view, the state legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect. The argument that there is a loss of productive societal resources when an educational qualification is withdrawn or a student is compelled to leave the course of studies (when he or she is found not to belong to the caste or tribe on the basis of which admission to a reserved seat was obtained) cannot possibly outweigh or nullify the legislative mandate contained in Section 10 of the state legislation. When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under Article 142 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an

avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by Article 142 despite the state law.

55. This aspect has been considered in a recent judgment rendered by one of us in *Nidhi Kaim and Another V. State of Madhya Pradesh And Others*[41], wherein, speaking for a Bench of three Judges, in a case of systemic fraud in relation to medical admissions in the State of Madhya Pradesh. It was observed as follows:

> "92...We are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of "the unfair". It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants would surely depict the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view that in the name of doing complete justice it is not possible for this Court to support the vitiated actions of the appellants through which they gained admission to the MBBS course."
>
> Explaining the matter further, this Court held that:
>
> "99 Besides the consideration recorded by us in the foregoing paragraphs, we may confess, that we felt persuaded for taking the view that we have, for a very important reason − national character. There is a saying when wealth is lost, nothing is lost; when health is lost, something is lost; but when character is lost, everything is lost
> The issue in hand has an infinitely vast dimension. If we were to keep in mind immediate social or societal gains, the perspective of consideration would be different. The submission canvassed needs to be considered in the proper perspective. We shall venture to drive home the point by an illustration. We may well not have won our freedom, if freedom fighters had not languished in jails ... and if valuable lives had not been sacrificed. Depending on the situation, even civil liberty or life itself, may be too trivial a sacrifice, when national interest is involved. It all depends on the desired goal. The Preamble of the Indian Constitution rests on the foundation of governance on the touchstone of justice. The basic fundamental right of equality before law and equal protection of the laws is extended to citizens and non-citizens alike through Article 14 of the Constitution on the fountainhead of fairness. The actions of the appellants are founded on unacceptable behaviour, and in complete

> breach of the Rule of Law. Their actions constitute acts of deceit invading into a righteous social order. National character, in our considered view, cannot be sacrificed for benefits − individual or societal. If we desire to build a nation on the touchstone of ethics and character and if our determined goal is to build a nation where only the Rule of Law prevails, then we cannot accept the claim of the appellants for the suggested societal gains. Viewed in the aforesaid perspective, we have no difficulty whatsoever in concluding in favour of the Rule of Law. Such being the position, it is not possible for us to extend to the appellants any benefit under Article 142 of the Constitution."

We are in respectful agreement with the above principle and statement of the legal position.

56. Medical education is what middle-class parents across the length and breadth of the county aspire for their children (whether this will continue to be so in future is a moot question). There is intense competition for a limited number of under-graduate, post-graduate and super-speciality seats. This can furnish no justification for recourse to unfair means including adopting a false claim to belong to the reserved category. The fault - lines of our system, be it in education, health or law, are that its lethargy and indolence furnish incentives for the few who choose to break the rules to gain an unfair advantage. In such a situation, the court as a vital institution of democratic governance must be firm in sending out a principled message that there is no incentive other than for behaviour compliant with rules and deviance will meet severe reprimands of the law.

I Conclusion

57. For these reasons, we hold and declare that

> "(i) The directions which were issued by the Constitution Bench of this Court in paragraph 38 of the decision in Milind were in pursuance of the powers vested in this Court under Article 142 of the Constitution;
>
> (ii) Since the decision of this Court in Madhuri Patil which was rendered on 2 September 1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for (a) the issuance of caste certificates; (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government; (c) the procedure for the conduct of investigation into the authenticity of the claim; (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine; (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and (f) Prosecution for a criminal offence;

(iii) The decisions of this Court in R. Vishwanatha Pillai and in Dattatray which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual - such as an appointment to a post or admission to an educational institution - on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

(iv) The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

(v) By Maharashtra Act XXIII of 2001 there is a legislative codification of the broad principles enunciated in Madhuri Patil. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates (Section 6(2) and 6(3); cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

(vi) The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18 October 2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

(vii)Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

(viii) The decisions in Kavita Solunke and Shalini of two learned Judges are overruled. Shalini in so far as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

(ix) Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

(x) The judgment of the Full Bench of the Bombay High Court in Arun Sonone is manifestly erroneous and is overruled; and

(xi) Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a

power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act XXIII of 2001 holds the field."

58. We will, now in the light of the reasons indicated above, proceed to dispose of the individual cases in the following terms:

"1 *Chairman and Managing Director FCI Vs. Jagdish Balaram Bahjra*[42]- :

59. On 6 December 1984, Food Corporation of India offered appointment to the respondent on the post of Messenger - Depot which was reserved for the Scheduled Tribes on the basis of a caste certificate dated 28 August 1978 issued by the Executive Magistrate, Panvel, stating that the applicant was a Hindu Mahadev Kohli and hence belonged to a Scheduled Tribe. Upon a declaration submitted by the respondent he was appointed to the post on 8 January 1985 in the Scheduled Tribe quota. The respondent received promotional benefits in the post of Dusting Operator (13 August 1990), Senior Dusting Operator (30 December 2000), Picker (1 December 2003) and Senior Picker (20 December 2005). The caste certificate submitted by the respondent was invalidated by the Scrutiny Committee, Konkan Division, Thane. The claim of the respondent to belong to the Mahadeo Koli Scheduled Tribe was found not to be established and the certificate was accordingly invalidated and cancelled. Following this his services were terminated on 4 October 2013.

60. The respondent instituted writ proceedings before the Bombay High Court to challenge the order of the Scrutiny Committee and his termination from service. By a judgment dated 4 April 2014 the High Court noted that the respondent was seeking only protection of his services and was willing to give up the claim of belonging to a Scheduled Tribe. By its judgment, the High Court accepted the contention of the respondent and held that he was entitled to protection of services with continuity while the management would be at liberty to withdraw such benefits as were granted after 28 September 2000. The employer moved a Special Leave Petition and in pursuance of an interim order dated 11 August 2014, the respondent was reinstated in service and was granted further promotions. Eventually upon his superannuation on 31 August 2015 the respondent was granted his terminal benefits including gratuity, arrears of wage revision, medical reimbursement, leave encashment, contributory provident fund and productivity linked incentive.

61. During the pendency of the litigation, the respondent is retired from service and has even been paid his terminal dues. Hence, at this stage, all that can be observed is that no claim by a member of Mahdeo Koli, Scheduled Caste shall be made or entertained on behalf of the respondent or any member of his family on the strength of the caste certificate which has been invalidated by the Scrutiny Committee. No further benefits of any nature whatsoever would be admissible to the respondent on the basis of his claim which has been invalidated. However, in the peculiar facts, we are not inclined to order recovery has to be made from the respondent. The Civil Appeal is disposed of.

"2 *Shri Shivaji Shikshan Sanstha & Anr. Vs. Raju Laxman Gadekar & Ors*[43]. and

3. *State of Maharashtra Vs. Raju Laxman Gadekar & Ors*[44]: "

62. In September 1981, Raju Laxman Gadekar obtained a caste certificate that he belonged to the Halba Scheduled Tribe in Maharashtra. On the strength of the caste certificate, he was appointed as an Assistant Teacher in a post reserved for a Scheduled Tribe in Shri Shivaji High-School, Dongaon on 24 June 1989. On 2 March 2005, he filled up an application in Form E and submitted an affidavit in Form F through his employer to the Scrutiny Committee, which was invalidated on 20 February 2008. Since the claim that he belonged to a Scheduled Tribe was invalidated, his services were terminated by the employer on 26 February 2008. The challenge to the order of termination failed before the School Tribunal. The writ petition challenging the order of the Scrutiny Committee was dismissed on 7 August 2009. The order of the School Tribunal was challenged in a separate Writ Petition which was allowed by a learned Single Judge of the High Court on 16 October 2009 and the employee was directed to be reinstated. In an appeal by the employer, the Division Bench set aside the judgment of the learned Single Judge on 17 April 2010 and dismissed the writ petition. A Special Leave Petition filed by the employee under Article 136 of the Constitution was dismissed by this Court as not pressed on 1 October 2010. Thereafter the respondent filed a writ petition praying for his reinstatement and protection of his service. By the judgment dated 5/8/9/10 July 2013 the High Court held that the employee was entitled to the protection of his services.

63. From the narration of the facts it is clear that the Writ Petition filed by the employee challenging the order of the Scrutiny Committee was dismissed on 7 August 2009 and it has been held that he does not belong to the Halba Scheduled Tribe. The caste certificate which was obtained by the respondent has been demonstrated to be a false caste certificate. The challenge to the order of termination also attained finality since the Special Leave Petition against the judgment of the High Court was dismissed as not pressed. In the circumstances, the High Court has clearly erred in allowing protection of service to the employee. Such a direction is also contrary to the provisions of Maharashtra Act XXIII of 2001. The appointment secured by the respondent on the basis of a false caste claim was required to be withdrawn in terms of provisions of Section 10. There has been a complete misuse of the process by the Respondent.

64. We, therefore, allow the Civil Appeals and set aside the judgments and orders of the High Court dated 10 April 2013 and 5/8/9/10 July 2013.

65. In the circumstances, there shall be no order as to costs.

4 *State of Maharashtra Vs. Ku. Chhaya D/o.Hemraj Nimje & Ors*:

66. Chhaya Nimje obtained a caste certificate on 20 July 1991 from the Executive Magistrate, Narkhed to the effect that she belongs to the Halba Scheduled Tribe. On the basis

of the caste certificate she obtained appointment as an Assistant Teacher on 24 December 1996 in Bhimrao Bapu Deshmukh Adarsh Vidyalaya. On 9 March she filled up an application in Form E together with an affidavit in Form F under Rule 11 of the Maharashtra ST (Regulation of Issuance & Verification of) Caste Certificate Rules, 2003. The Vigilance Cell submitted a report showing that her records were of the Koshti community. Before the Scrutiny Committee could decide her claim she approached the High Court in a writ petition seeking protection of service. The High Court disposed of the writ petition on 30 January 2013, on the statement of the employer that her services will not be terminated unless the caste certificate is invalidated by the Scrutiny Committee. She again filed a Writ Petition before the High Court seeking protection of her services.

67. The respondent has no right to claim protection of her services. The respondent has misused the process of law by filing successive writ petitions to pre-empt an adjudication by the Scrutiny Committee and then confining the claim only to the protection of her services.
For the reasons which are indicated in the body of the judgment and for the above reasons, the Civil Appeal is allowed and impugned judgment and order of the High Court is set aside. No other submission is urged.

68. In the circumstances, there shall be no order as to costs.

5 State of Maharashtra & Anr. Vs. Mrs.Arundhati Suresh Ninawe & Anr[46]*.-:*

69. The respondent was appointed as a Lecturer on a post reserved for the Scheduled Tribes on 20 March 1997 on the basis of a caste certificate dated 18 May 1995 stating that she belongs to the Halba Scheduled Tribe. The Scrutiny Committee has invalidated the caste certificate and directed it to be confiscated. The High Court by its order dated 26 November 2012 has confirmed the order of invalidation but has granted protection of service. By a subsequent order the High Court has ordered the State to consider revision/refixation of pay scales.

70. For the reasons indicated by this court while disposing of Civil Appeal Nos.9155 and 9157 of 2015 and for those contained in the body of the judgment, the Civil Appeals are allowed. The impugned judgments and orders of the High Court are set aside. No other submission is urged.

There shall, however, be no order as to costs.

6. *Mahatma Fule Krishi Vidyapeeth Vs. Nagnath Baburao Mangrule & Ors*[47]*.* :

71. The respondent was appointed as an Agricultural Assistant on a post reserved for the Scheduled Tribes on 22 July 1996 on the basis of a caste certificate dated 3 February 1991 stating that he belongs to the Mahadeo Koli tribe. On 26 August 2011 the respondent submitted his caste certificate and other documents for verification of the caste claim, which were forwarded to the Scrutiny Committee. In the meantime the appellant initiated a departmental enquiry against the respondent and terminated the services of the respondent by

its order dated 18 December 2012. Subsequently the Scrutiny Committee invalidated the caste claim of the respondent by its order dated 3 October 2013. The High Court by its order dated 4 April 2014 has confirmed the order of invalidation but has granted protection of service.

72. For the reasons indicated in the body of the judgment and those indicated while allowing Civil Appeal Nos.9155 and 9157 of 2015, the Civil Appeal shall stand allowed. The impugned judgment and order of the High Court is set aside insofar as it protects the services of the respondent.

72. There shall be no order as to costs.

7 *Suresh S/o.Dewaji Vairagade Vs. The Controller General, Indian Bureau of Mines, Indira Bhavan, Civil Lines, Nagpur & Anr*[48].:

73. The appellant was appointed as an Assistant Store Keeper on a post reserved for the Scheduled Tribes on 14 November 1988 on the strength of a caste certificate dated 14 January 1985 stating that he belongs to the Halba Schedule Tribe. The Scrutiny Committee by its order dated 30 August 2005 invalidated the caste claim of the appellant. Subsequently the respondent terminated the services of the appellant in pursuance of the proviso to Sub Rule 1 of Rule 5 of the Central Services (Temporary Services) Rules, 1965. Being aggrieved, the appellant filed a writ petition which was dismissed by the High Court by its order dated 3 August 2009.

74. Having due regard for the reasons contained in the body of this judgment, we find no error in the judgment of the High Court. The Civil Appeal shall stand dismissed. No other submission is urged.

There shall be no order as to costs.

8 *Rajendra S/o. Ramaji Mahisbadwe Vs. The Joint Commissioner and Vice-Chairman Scheduled Tribe, Caste Certificate Scrutiny Committee & Anr*[49]:

75. The appellant was appointed as a trainee technician in Air India on a post reserved for the Scheduled Tribes on 6 August 1997 on the basis of a caste certificate dated 9 August 1988 stating that he belongs to the Halba Schedule Tribe. Thereafter the appointment of the appellant was confirmed on 1 March 1999. The second respondent sought a clarification from Tehsildar, Nagpur to ascertain whether the caste certificate is genuine or not. The Tehsildar by a letter dated 17 October 2008 stated that the name of the appellant is not borne in the records. Accordingly the second respondent terminated the services of the appellant by an order dated 3 November 2009. The Scrutiny Committee by its order dated 5 October 2012 invalidated the caste claim of the appellant.

76. The High Court by its judgment dated 11 March 2013 has declined to grant protection to the services of the appellant upon the invalidation of his claim to belong to the Halba

Scheduled Tribe by the Scrutiny Committee on 5 October 2012. There is a clear and patent misuse of process by the Appellant. In the absence of the caste validity certificate, the appointment of the Appellant cannot be held to have attained finality. Having due regard to the reasons contained in the body of this judgment, we find no error in the judgment of the High Court. The Civil Appeal shall stand dismissed. No other submission is urged.

There shall be no order as to costs.

9 *Chhaya d/o.Yadaorao Barapatre @ Chhaya W/o. Rajeev Dhakate Vs. The State of Maharashtra & Ors*[50]. :

77. The appellant was appointed as a Junior Lecturer in the fourth respondent High School on a post reserved for the Scheduled Tribes on 2 July 1991 on the basis of a caste certificate dated 23 July 1984 stating that she belongs to the Halba Schedule Tribe. On 14 March 1997 the appellant's appointment as a Junior Lecturer was confirmed by the fourth respondent. The Scrutiny Committee invalidated the caste claim of the appellant by its order dated 8 November 2012. The High Court by its impugned judgment and order dated 5 April 2013 has declined to grant protection of services. The appellant preferred a review which was dismissed by the High Court by its order dated 10 May 2013. For the reasons contained in the body of the judgment and having due regard to the invalidation of the claim of the respondent by the Scrutiny Committee, we find no error in the judgment of the High Court. The Civil Appeals are accordingly dismissed.

There shall be no order as to costs.

10. *Ravindra Govindrao Nagpurkar Vs. Secretary, Rajasthan Education Society Washim & Ors*[51]. :

78. The appellant was appointed as a Lecturer on a post reserved for the Scheduled Tribes on 14 August 1995 on the basis of a caste certificate dated 13 May 1982 stating that he belongs to the Halba Scheduled Tribe. The caste claim of the appellant was invalidated by the Scrutiny Committee by its order dated 18 January 2005. Thereafter the appellant was issued a show cause notice dated 3 January 2006 by the first respondent to explain why his services should not be terminated. On 16 January 2006 the appellant filed a writ petition and challenged the show cause notice. However, on the same day the first respondent had already issued an order of termination. Thereafter the High Court granted permission to withdraw the writ petition and liberty was granted to file proceedings before the appropriate forum. The appellant preferred an appeal before the University & College Tribunal, Nagpur which was dismissed by the tribunal by its order dated 30 December 2012. The High Court by its impugned judgment and order dated 18.3.2013 has declined to grant protection of services. The Review Petition was also dismissed on 29 November 2013. For the reasons contained in the body of the judgment and having due regard to the invalidation of the claim of the respondent by the Scrutiny Committee, we find no error in the judgment of the High Court. The Civil Appeals are accordingly dismissed.

There shall be no order as to costs.

11 *Shri Shivaji Education Society & Anr. Vs. State of Maharashtra & Ors*[52].:

79. The third respondent was appointed as an Assistant Teacher on a post reserved for the Scheduled Tribes on the basis of a caste certificate showing him as belonging to the Thakur Scheduled Tribe. By its order dated 23 April 2008 the Scrutiny Committee invalidated the tribe claim and confiscated his certificate. The services of the third respondent were terminated on 12 May 2008. While dismissing the writ petition challenging the order of the Scrutiny Committee the High Court by its order dated 15 December 2015 has none the less directed reinstatement of the third respondent subject to an undertaking that he would not claim the benefit of belonging to the Scheduled Tribe in future. Once the tribe claim of the respondent has been held to be false, the judgment of the High Court is unsustainable for the reasons indicated in the body of this judgment. The Civil Appeal is accordingly allowed and the judgment and order of the High Court dated 15 December 2015 is set aside. In consequence the Writ Petition filed by the third respondent shall stand dismissed.

There shall be no order as to costs.

12 *Hindustan Aeronautics Limited Vs. Murlidhar Arjun Neware and Anr*[53]*:*

80. The respondent was appointed on the post of Assistant Engineer (Grade-I) reserved for the Scheduled Tribes on 11 March 1992 on the strength of a caste certificate stating that he belongs to the Gondgowari tribe. The Scrutiny Committee initially by an order dated 23 June 2004 rejected the tribe claim. Subsequently in pursuance of order of remand passed by the High Court, the Scrutiny Committee investigated into the matter again and invalidated the tribe claim by its order dated 2 January 2006 and ordered the tribe certificate to be cancelled. The High Court dismissed the Writ Petition filed by the respondent on 10 November 2006 and the review petition was also dismissed for want of prosecution on 5 April 2006. However, subsequently the review petition, after restoration, was allowed on 30 January 2015 and while the cancellation of the caste certificate was upheld protection to the services of the respondent was granted.

81. For the reasons contained in the body of the judgment and having due regard to the fact that the claim of the respondent has been found to be false, we find merit in the appeals which have been filed by the appellant. The impugned judgments of the High Court dated 30 January 2015 are accordingly set aside. The writ proceedings filed by the respondent shall, in the circumstances, stand dismissed. The Civil Appeals are allowed in these terms. No other submission is urged.

There shall be no order as to costs.

13 *India Trade Promotion Organisation Vs. Vivekkumar Lajjashankar Chaurasiya*[54]*:*

82. The Scrutiny Committee by its order dated 30 March 2013 has found that the respondent does not belong to the Nagawanshi tribe. The respondent was appointed on a post reserved for the Scheduled Tribes on the strength of a certificate that he belongs to the Nagawanshi tribe. The Division Bench of the High Court, placing reliance on the judgment of the Full Bench in Arun Sonone's case (supra), has by its judgment dated 16 February 2015 granted reinstatement to the respondent.

83 For the reasons contained in the body of the judgment, the appeal filed by the employer shall have to be allowed and is accordingly allowed. The impugned judgment of the High Court dated 16 February 2015 is set aside. No other submission is urged.

There shall be no order as to costs.

14. *Mumbai Metropolitan Region Development Authority Vs. Rajendra Ramchandra Dhakate & Anr*[55]. :

84. The claim of the respondent to belong to the Halba Scheduled Tribe has been invalidated by the Scrutiny Committee by its order dated 30 July 1998. The Scrutiny Committee has found that the documents submitted by the first respondent were manipulated and fabricated. The respondent was appointed to a post reserved for the Scheduled Tribes on the basis of a caste certificate stating that he belongs to the Halba Scheduled Tribe. The termination of the services the respondent has followed upon the cancellation of the caste certificate.

85. In the circumstances and for the reasons contained in the body of the judgment, the High Court erred in allowing the writ petition filed by the respondent and directing the appellant to reinstate him. The Civil Appeal is accordingly allowed by setting aside the impugned judgment and order of the High Court dated 20 January 2015. The writ petition filed by the respondent shall, in the circumstances, stand dismissed.

There shall be no order as to costs.

15 *State of Maharashtra Vs.Vasant, s/o.Gyandeo Gonnade*[56]*:*

86. The respondent was appointed on the post of Junior Engineer on 21 July 1982 on the basis of a claim of belonging to the "Halba Koshti" Scheduled Tribe. The Scrutiny Committee invalidated his claim on 19 August 1985. In the meantime, the Maharashtra Public Service Commission recommended the respondent for appointment in the cadre of Assistant Engineer in 1984 and 1986 but he was not granted placement. The respondent filed a writ petition to challenge the order of the Scrutiny Committee dated 19 August 1985 which was dismissed by the High Court on 4 July 1986. Thereafter the respondent filed an appeal (Caste Appeal) 11/1986-87 before the Divisional Commissioner, Nagpur against the order of the Scrutiny Committee. The appeal was disposed of on 23 August 1985 by remanding the proceedings back to the Scrutiny Committee. On remand, the Scrutiny Committee, by its order dated 28 August 1989 found that the respondent does not belong to the Scheduled

Tribe and cancelled his caste certificate. The respondent filed an appeal before the Additional Divisional Commissioner, Nagpur which was dismissed on 12 November 1990. The respondent filed a writ petition challenging the invalidation of his caste claim and to seek relief in respect of his service conditions. By an order dated 23 March 1995 the writ petition was allowed by holding that the respondent belongs to the Halba Koshti caste but that was made subject to the decision in Milind (supra).

87. The respondent was granted placement in the seniority of Assistant Engineer with effect from 29 July 1987, subject to the final outcome of the proceedings in Milind (supra). On 18 October 1995 the respondent was appointed as Assistant Executive Engineer subject to the decision in Milind (supra) and he joined on 4 December 1995. On 4 October 1999 the respondent was promoted to the post of Executive Engineer subject to the final disposal of the proceedings before this Court in Milind (supra). It was directed that the seniority would be fixed after the final decision of this Court. On 15 September 2000 the respondent was given a deemed date of 29 May 1987. On 15 April 2005, considering the judgment of this Court in Milind (supra), the appointment of the respondent to the post of Assistant Executive Engineer was protected and he was regularized on the post considering it as an open category post. His seniority was directed to be fixed from the date of appointment and it was ordered that he shall not get the benefit of belonging to a Scheduled Tribe. On 6 August 2005 the earlier deemed date of 29 May 1987 was modified and his seniority on the post of Assistant Executive Engineer was fixed from 4 December 1995. On 5 June 2006 a G.R. was issued by which the deemed date was modified to 29 May 1987 on the post of Assistant Executive Engineer for the purpose of seniority. On 1 August 2009 a G.R. was issued by which the deemed date for the purpose of seniority on the post of Executive Engineer was set as 29 May 1991 subject to approval of the M.P.S.C. On 28 April 2014 the State Government published a seniority list from 1 January 2011 to 13 December 2013 for Executive Engineer. The respondent who was aggrieved by the G.R. dated 28 April 2014 filed a writ petition before the High Court at its Nagpur Bench praying for an appropriate writ for the declaration of the date of his seniority. The High Court by its judgment dated 27 February 2015 has adverted to the decision in Arun Sonone and has come to the conclusion that the G.R. dated 6 August 2005 is not sustainable and the state government has been directed to give effect to its G.R.s dated 15 September 2000 and 15 April 2005 by placing the respondent in the cadre of Assistant Engineer with effect from 29 May 1987.

88. From a reading of the judgment of the High Court, it is clear that the primary consideration which weighed with it was the decision of its Full Bench in Arun Sonone. In view of the reasons contained in the body of this judgment, this basis of the impugned decision of the High Court is erroneous. The Respondent does not belong to the Halba Scheduled Tribe. It is also clear that the benefits obtained by the Respondent were subject to the decision in Milind. In Milind, this Court has held that Halba - Koshti is not a Scheduled Tribe, the relevant entry in the Scheduled Tribes Order 1950 being ‘Halba, Halbi’.

89. We accordingly allow the Civil Appeal and set aside the impugned judgment dated 27 February 2015.

There shall be no order as to costs.

16 *State of Maharashtra Vs.Ku.Vijaya Deorao Nandanwar & Anr*[57]. :

90. The claim of the respondent of belonging to the Halba Scheduled Tribe has been invalidated by the Scrutiny Committee by its order dated 7 November 2009. The respondent was appointed as an Assistant Teacher on a post reserved for the Scheduled Tribes. Following the invalidation of the claim, the services of the respondent were terminated. The High Court by its impugned order dated 5 July 2013 set aside the order of termination and granted protection to the service of the respondent.

91. For the reasons contained in the body of the judgment, the impugned order of the High Court is unsustainable and is accordingly set aside. The writ petition filed by the respondent shall, in the circumstances, stand dismissed. The Civil Appeal is allowed in these terms. No other submission has been urged.

There shall be no order as to costs.

17 *Ishwar Shrawan Nikhare Vs.State of Maharashtra & Ors*[58]. :

92. The appellant was appointed as an Assistant Teacher in a vacancy reserved for the Scheduled Tribes on 30 January 1999. The Caste Scrutiny Committee invalidated the claim of the appellant on 1 July 2008. The Division Bench of the High Court, by its order dated 30 January 2009 allowed the request for the withdrawal of the writ petition filed by the appellant keeping open the validity of the observations made by the Scrutiny Committee whereby prosecution was ordered. The services of the appellant were terminated on 8 February 2009. The appellant filed an appeal before the School Tribunal which was dismissed on 19 October 2011 on the ground that the appointment of the appellant was not a valid appointment in the eye of law. The learned Single Judge dismissed the writ petition challenging the order of the Tribunal. A Letters Patent Appeal has been dismissed by the Division Bench by its judgment dated 7 May 2012. Having regard to the fact that the claim of the appellant to belong to a Scheduled Tribe was invalidated by the Scrutiny Committee, the School Tribunal cannot be faulted in declining to entertain the appeal against the consequential order of termination of service. Moreover, for the reasons contained in the body of the present judgment, we find no merit in the Civil Appeal. The Civil Appeal is accordingly dismissed. No other submission has been urged.

There shall be no order as to costs.

18 Eknath Barikrao Dhanwade Vs.Divisional Controller. State Transport Corporation & Anr[59]. :

93. The appellant was appointed as a driver in 1999 with the respondent on a post reserved for Scheduled Tribes on the basis of a caste certificate that he belongs to the Mahadeo Koli

tribe. The appellant's caste claim was rejected by the Scrutiny Committee holding that the appellant does not belong to the said tribe. A writ petition was filed by the appellant. The High Court by an order dated 11 January 2000 remanded the matter to the Scrutiny Committee. On 2 March 2001 the Scrutiny Committee invalidated the tribe claim of the appellant. The appellant filed a Writ Petition before the High Court. By an order dated 30 June 2014, the High Court dismissed the petition. The appellant filed another writ petition which was dismissed with costs by an order dated 19 September 2014. Subsequently on 19 November 2014 the first respondent terminated the service of the appellant. Being aggrieved, the appellant filed another writ petition which was dismissed by the High Court by its order 19 January 2015. The above narration indicates a complete abuse of process by the appellant. For the reasons contained in the body of the present judgment and in view of the above, we find no merit in the appeal. The Civil Appeal is accordingly dismissed. No other submission is separately urged.

There shall be no order as to costs.

19 *Pradip Gajanan Koli Vs.State of Maharashtra & Ors*[60]*. :*

94. The appellant was appointed to the post of Fireman in the reserved category for the Scheduled Tribes on 12 March 1996. Thereafter a caste certificate dated 22 June 2000 certifying that the appellant belongs to the Mahadeo Koli Scheduled Tribe was issued. The caste certificate was referred to the Scrutiny Committee for verification. The appellant submitted an affidavit stating that he belongs to the said caste and also appeared before the Committee. By an order dated 7 July 2012 the Scrutiny Committee invalidated the caste certificate of the appellant. The appellant filed a writ petition which was disposed of by the High Court, by its judgment and order dated 20 November 2013 with a direction that in case the appellant is still in service as on that date, his employment shall not be terminated for a period of three months from the date of its order.

95. For the reasons contained in the body of the present judgment, we find no error in the impugned judgment. The Civil Appeal is accordingly dismissed. No other submission is separately urged.

There shall be no order as to costs.

20 *Union of India & Ors. Vs.Suryakant & Ors*[61]*. :*

96. The Director General, Vigilance, New Delhi by an order dated 1 July 2005, initiated the verification of tribe certificates of employees who were appointed from 1995. Accordingly, the original tribe certificate of the respondent was asked to be produced. The respondent was appointed on the post of Lower Division Clerk reserved for the Scheduled Tribes on the strength of a caste certificate stating that he belongs to the Mahadeo Koli tribe. The certificate was issued by the Tahsildar, Akola on 13 May 1985. Subsequently on enquiry about the authenticity of the tribe certificate, the Tahsildar, Akola informed that the register

for the year 1985 was not traceable and hence it cannot be stated whether certificate was issued by office or otherwise. Instead of submitting his original caste certificate the respondent produced a fresh tribe certificate dated 21 July 2005 issued by S.D.O., Bhusawal wherein it was stated that he belongs to the Mahadeo Koli tribe. By an order dated 10 October 2011 the Scrutiny Committee invalidated the caste claim of the respondent. The respondent filed a writ petition before the High Court. The High Court by its impugned judgment and order dated 20 October 2015 allowed the writ petition, relying upon its Full Bench judgment in Arun Sonone (supra) with a direction that the respondent is entitled to claim service protection and shall not be entitled to claim promotion in employment.

97. The narration of facts reveals a complete misuse of process by the Respondent. For the reasons contained in the body of the judgment, the impugned order of the High Court is unsustainable and is accordingly set aside. The Civil Appeal is accordingly allowed in these terms. No separate submission is urged.

There shall be no order as to costs.

21 *Executive Director (Lubes). Indian Oil Corporation Ltd. Vs. Ashok Mahadeorao Pathrabe & Ors.*[62]:

98. The respondent joined IOCL in 1976 at its R & D Centre, Faridabad. At the time of the appointment, the respondent has shown himself as belonging to the Halba Scheduled Tribe. The appointment was subject to the information submitted by the respondent being true and correct. The respondent submitted his caste certificate along with a prescribed form/documents on 15 December 2006 which were forwarded for verification. The Scrutiny Committee rejected the caste claim of the respondent on 4 October 2010. Being aggrieved, the respondent preferred an internal appeal and also a writ petition before the High Court. By its order dated 1 March 2011 the appellant rejected the appeal of the respondent upholding the dismissal order. Subsequently on 7 December 2011 the High Court also dismissed the petition of the respondent upholding the dismissal order. Being aggrieved, the respondent filed a Special Leave Petition before this Court which was dismissed by an order dated 27 February 2012. The appellant filed another writ petition before the High Court which was allowed by an order dated 24 November 2015 to the extent that the services of the respondent were protected till his superannuation.

99. The facts narrated above reveal a complete misuse of process by the Respondent. For the reasons contained in the body of the judgment, the impugned orders of the High Court are unsustainable and are accordingly set aside. The Civil Appeals are accordingly allowed in these terms. No other submission is urged.

There shall be no order as to costs.

22 *The State of Maharashtra & Ors. Vs. Rupesh s/o.Teksingh Shinde*[63]*-:*

100. The respondent was appointed as a clerk on a post earmarked for the Vimukta Jatis on 26 March 1999 claiming that he belongs to the Rajput Bhamta Vimukta Jati. The caste claim of the respondent was referred to the Scrutiny Committee for verification and was invalidated by an order dated 29 July 2011. As the caste claim was invalidated the respondent was terminated from service by an order dated 16 August 2011. Being aggrieved, the respondent filed a writ petition before the High Court. After hearing both the parties, the court remanded the matter back to the Scrutiny Committee. The caste certificate was again invalidated by an order dated 21 January 2014 and the Committee observed that the respondent obtained a false caste certificate and directed the registration of an FIR against the respondent, pursuant to which the services of the respondent were terminated. Being aggrieved the respondent filed a writ petition before the High Court. The High Court by its impugned judgment and order dated 3 February 2016 allowed the writ petition relying upon its Full Bench judgment in the case of Arun Sonone Vs. State of Maharashtra (supra) with a direction to the appellant to reinstate the respondent on his original post.

101. The facts narrated above indicate the manner in which the process has been abused by the Respondent. For the reasons contained in the body of the judgment, the impugned order of the High Court is unsustainable and is accordingly set aside. The Civil Appeal is accordingly allowed in these terms. No other submission is urged.

102. There shall be no order as to costs.

Judgment Referred.

[1]*(1994) 6 SCC 0241*
[2]*(1986) 1 Bom CR 0403*
[3]*(2001) 1 SCC 0004*
[4]*(2004) 2 SCC 0105*
[5]*(2005) 7 SCC 0690*
[6]*(2007) 5 SCC 0336*
[7]*(2007) 14 SCC 0481*
[8]*(2008) 4 SCC 0612*
[9]*(2008) 5 SCC 0652*
[10]*(2006) 3 SC 0257*
[11]*(2007) 1 SCC 0080*
[12]*AIR 2008 SC 3266*
[13]*(2006) 7 SCC 0501*
[14]*C.A.No. 233 of 2007*
[15]*(2007) 14 SCC 0488*
[16]*(2008) 9 SCC 0054*
[17]*(2008) 14 SCC 0545*
[18]*(2010) 14 SCC 0489*
[19]*(2010) 15 SCC 0537*
[20]*(2011) 9 SCC 0798*
[21]*(2012) 1 SCC 0549*
[22]*(2012) 8 SCC 0430*
[23]*(2013) 16 SCC 0526*
[24]*(2014) 4 SCC 0434*
[25]*(1994) 1 SCC 0359*
[26]*(2016) 8 SCC 0715*
[27]*(2007) 1 Mh. L.J 0423*
[28]*(2004) 3 Mh. L J 1109*
[29]*(2009) 2 Mh. L.J. 0788*
[30]*(2009) 4 Mh L.J. 0847*
[31]*(2013) 1 Mh. LJ 0139*
[32]*(2015) 1 Mh L.J. 0457*
[33]*(2013) 16 SCC 0526*

[34]*(2005) 7 SCC 0690*
[35]*(2007) 5 SCC 0336*
[36]*(2008) 4 SCC 0612*
[37]*(2008) 5 SCC 0652*
[38] *8th Ed.Vol.2 pages1355-1358*
[39]*(2016) 9 SCC 0426*
[40]*G P Singh, On the Interpretation of Statutes -4 Edition pages 580, 583*
[41]*(2017) 4 SCC 0001*
[42]*C. A. No.8928 of 2015*
[43]*C.A.No. 9155 of 2015*
[44] *C.A.No.9157 of 2015*
[45] *C.A.No.9160 of 2015*
[46] *C.A.No.9203-04 of 2015*
[47] *C.A.8926 of 2015*
[48] *C.A. No.1918 of 2010*
[49] *C.A.No. 9154 of 2015*
[50] *C.A.No.9158-59 of 2015*
[51]*C.A.No.8604-05/17*
[52]*C.A.No.8601/17 @ SLP (C) No. 289 of 2016*
[53]*C.A. No. 8602-03/17 @ SLP(C) Nos.529-30 of 2016*
[54]*(C.A.No.8607/17 @ SLP ©No.14830 of 2015*

[55]*C.A.No.8609/17 @ SLP (C) No.13409 of 2015*
[56]*C.A.No. 8606/17 @ S.L.P. (C)No. 19992 of 2015*
[57]*C. A. No.9107 of 2015*
[58]*C.A.No.7187 of 2013*

[59]*C.ANo.8608/17 @ SLP (C)… CC No. 10889 of 2015*
[60]*C.A.No.8598/17 @ SLP (C) 18925 of 2014*
[61]*C.A.No.8597/17 @ SLP (C) No. 16852 of 2016)*
[62]*C.A.No.8599-8600/17 @ SLP (C) Nos. 29388-89 of 2016*
[63]*C.A.No.8610/17 @ SLP (C) No.2299 of 2017*