RAJASTHAN HIGH COURT

Maya Devi Dagala

Vs.

State of Rajasthan
Civil Writ Petn. No. 2589 of 2004

(N.P. Gupta, J.)

07.07.2004

ORDER

N. P. Gupta, J.

1. Heard learned counsel for the petitioner.

2. The petitioner has described herself as Maya Devi Dagala wife of Topan Ram Dagala. With this description, it is alleged, that the petitioner belongs to the caste and also claims that she belongs to Scheduled Tribe. Accordingly, she applied for obtaining a certificate to that effect, vide application Annexure-1, but then, certificate Annexure-5 has been issued certifying her to be belonging to Scheduled Caste.

3. The contention of the learned counsel for the petitioner is, that according to the Annexure-6, the caste is included in the Scheduled castes at item No. 57, while was included in Scheduled Tribes, which was subsequently de-notified in the year 1964, and then it was included in the list of 'Backward Castes'. It is contended that the term has been spelt in various categories in different spelling and thus, according to the learned counsel, it stands included in every category, being Scheduled Castes, Scheduled Tribes and Backward Castes, such state of affairs is arbitrary, and since the petitioner claims to be belonging to Scheduled Tribe, she should have been issued certificate of Scheduled Tribe.

4. I have considered the submissions. Since the subject of Scheduled Caste and Scheduled Tribe is covered by the provisions of Articles 341 and 342 of the Constitution, I may gainfully quote the two articles, which read as under :-

Article 341 of the Constitution

(1) The President may, with respect to any State or Union territory, and where it

is a State .....after consultation with the Governor ..... thereof, by a public notification, specify the castes, races, or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, on part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342 of the Constitution.

(1) The President may, with respect to any State or Union territory, and where it is a State ..... after consultation with the Governor ..... thereof, by a public notification, specify the tribes or tribal communities or parts of or groups within tribes in tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any caste, race or tribe, on part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

5. A perusal of the aforesaid articles show that according to Article 341 of the Constitution of India, it is the President of India, who, in accordance with those provisions, specifies the castes, races, or tribes, or parts of or groups, within castes, races, or tribes, shall be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. Likewise, according to Article 342, it shall be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. According to sub-article (2), such list can be amended or varied by the Parliament from time to time, but save, as provided in that Article, it can- not be varied by any subsequent notification.

6. There has been catena of cases of Hon'ble the Supreme Court, on the interpretation of these Articles 341 and 342.

7. The Constitution Bench of Hon'ble the Supreme Court in *Bhaiyalal v. Harikishan*

Singh reported in [1]held as under :- (para10)

> "It is obvious that in specifying castes, races or tribes, the President has been expressly authorized to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State."

8. Then in *Sirish Kumar Choudhary v. State of Tripura,* [2]in para 21 it was noticed by Hon'ble Supreme Court as under :-

> "Reservation has become important in view of increasing competition in society and that probably has led to the anxiety of the appellant and the people in his community to claim reservation..... the basis on which inclusion into or exclusion from the enumerated list made under Article 342 is contemplated is the changing economic, educational and other situations of the members of any particular tribe....."

9. Likewise, in *Nityanand Sharma v. State of Bihar reported in* [3]in para 23 : (AIR 1996 Supreme Court 2306, para 20) a specific fact was noticed that a writ was filed under Article 32 in a representative capacity by some of the students belonging to Lohar community seeking admission to medical colleges to direct the District authorities to give them social status certificate as Scheduled Tribes, which was dismissed by Hon'ble Supreme Court holding that no direction could be issued to the authorities to act contrary to the Constitution and the law. With this while deciding the fresh appeal, it was noticed as under :-

> "..... This would give an insight into the consistent attempt by Lohar community to wear the mask of Schedule Tribe status and to masquerade as

such for getting the constitutional benefits meant for the poor tribes which the President in consultation with the Governor or the Parliament had not granted to them....."

10. From perusal of the Articles 341 and 342 it is also clear that the inclusion of any caste or tribe or part thereof in the schedule is to be in respect of a particular State, or a part thereof. Obviously therefore, may be that a particular caste or tribe or part thereof may require protection in a particular State or a part of the State, but may not so require in other States or other parts of the State, and therefore, such person would not be entitled to such protection in the other states or other part of the states. In this regard I may refer to the judgment of the Hon'ble Supreme Court in *Action committee v. Union of India reported in* [4] wherein in para-15 at page 435 (of J.T. : Para 14 of AIR SCW) Hon'ble Supreme Court has held as under :-

"..... Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made "in relation to that State" can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is "for the purposes of this Constitution" meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced, areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish ..... the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas..... that considerations for specifying a particular caste to tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or

class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State."

11. The question then arises is as to how to determine the identity of a person, for the purpose of conferment of social status, for the purpose of Articles 341 and /or 342 of the Constitution?

12. As the things stand, the castes were differentiated on the basis of descendancy, occupation, dress, social customs, modes of worship, living habits, and so on. Obviously, castes must have been identified on the basis of the nomenclature. The nomenclature of any particular caste, or sub-caste or section must have been, either on their own adoption, or conferment by the other sections of the society. The term 'caste' and 'tribe' have been defined in Shorter Oxford Dictionary at page 348 and 3386 respectively as under :-

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Caste :- A race, a stock, a breed.

A Hindu hereditary class of socially equal persons, united in religion and usually following similar occupations, distinguished from other castes in the hierarchy by its relative degree of purity or pollution. Any more or less exclusive social class. The position conferred by membership of a caste. The system of division of society into castes. The form of a social insect having a particular function, Half caste; The view that artists can or should form a special order or caste. Anderson Elimination of samurai as a legal caste.

Tribe :- Volume II page 3386

A group of (esp. primitive) families claiming descent from a common dialect, etc,.and usually occupying a specific leader. Jewish history, each of the twelve

divisions of Israelites claiming descent from the twelve sons of Jacob. A family with a recognized ancestry, Each of the political divisions of the Roman people (originally three, later thirty, ultimately thirty five), Each of the divisions of the ancient Greek people, originally on the basis of common ancestry, later forming a political unit: a phyle. Any similar natural or political division of people. A set or number of people or things: especially a set of people of a specified profession;

13. However, for identifying the persons for the purpose of finding out their caste, with the population explosion, and extensive migration, one of the most convenient modes has to be, as a *prima facie* factor, the suffix surname used by the person concerned. It is a matter of common knowledge, exceptions apart, that people generally suffix their caste or sub-caste with their name as a surname e.g. Lohar, Balai, Meena, Bheel, Sansi, Kanjar, Khatik, and so on. The difficulty arises in cases, where the person may believe on the basis of information gathered by him from some sources that he belongs to Scheduled Caste or Scheduled Tribe, but then may be for some last generations the identity of the believed caste or tribe on the parameters of social customs, worship, food habits, dress, and occupation has been totally lost, and as a necessary corollary the social stigma or handicap or disadvantage, or sufferance has altogether evaporated, and except the alleged birth mark, the person is in the main stream. It is realizing this hard fact, the person concerned starts feeling insulted, if not humiliated, in mentioning the birth mark caste, and since he is in the main stream, adopts a forward caste, which he feels to be his level. In that process, this adoption of the new caste also descends on some generations. The net result is, that as a matter of fact, for some generations the person has come to the main stream, and all social stigma or handicap or disadvantage, or sufferance have altogether evaporated. But then, in view of the benefits and privileges, as noticed by the Hon'ble Supreme Court, such persons in the main stream, desire to have an edge over the persons suffering from such social stigma or handicap or disadvantage or sufferance, rather wants to deprive the person entitled to the benefits and privileges, for one's own advantages. It is a different story that now the theory of creamy layer has come up, to take care of the situation to some extent. However, here I am faced with the situation, as to how to identify the social status of the person concerned.

14. Under the scheme of Articles 341 and 342, as held by the Constitutional Bench in Bhaiyalal's case : (AIR 1965 Supreme Court 1557) that before including or excluding any caste, tribe, or part thereof in the schedule, an enquiry is made on the relevant

aspects, but then, the difficulty that is precisely surfacing very often is that the person, may be in the main stream for generations, and adopting a particular caste as a surname, in order to deprive the persons eligible to the protection and benefits available to the Scheduled Castes and Scheduled Tribes desires to claim the benefit for himself and approaches the concerned local officers for issuance of a certificate, certifying him to be belonging to a particular caste, and thus to be belonging to the Scheduled Caste or Scheduled Tribe as the case may be. The precise question in this regard requiring to be gone into is as to how it is to be determined as to whether the particular person belongs to particular Scheduled Caste or Scheduled Tribe.

15. The Constitutional Bench of Hon'ble the Supreme Court in *BasavaLingappa v. Manichinnappa reported* [5]*in* in para-5 held that the object of the provision under Article 341(1) is to avoid all disputes as to whether a particular caste is a Scheduled Caste or not and only those caste are Scheduled Caste which are notified in the order made by the President and the power to include or exclude any caste is given to Parliament. Consequently, if the caste in question does not find specific mention in the terms of notification, it is not open to include any caste as coming within the notification on the basis of the evidence oral or documentary. Likewise, where even sub-castes are also notified then even if a person belongs to a different sub-caste, then the notified sub-caste, one cannot be conferred the status of belonging the Scheduled Caste or Scheduled Tribe, as the case may be.

16. In Sirish Kumar Choudhary'scase : (AIR 1990 Supreme Court 991), the question was as to whether the Laskars was included in the Tribe described as 'Tripura/ Tripuri/Tippera' and even after considering the evidence Hon'ble Supreme Court negatived the contention by holding in para-20 that "we do not think that we should assume jurisdiction and enter into enquiry whether the three terms indicated in the Presidential order include Deshi Tripura which covers the Laskar community."

17. In Nityanand's case (AIR 1996 Supreme Court 2306) (supra), the Tribe notified was 'Lohra' while the person concerned belonged to 'Lohar' community, and Hon'ble the Supreme Court declined the granting of status. This was followed in *VinayPrakash v. State of Bihar,* [6]which was again was a case of the same community.

18. I may now refer to a recent Constitutional Bench decision of Hon'ble the Supreme Court in *State of Maharashtra v. Milind reported in* [7]wherein in para-35 and 36 (of J.T.) : (paras 34 and 35 of AIR) it was held as under :

> 35. In order to protect and promote the less fortunate or unfortunate people who

have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be at par with others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better placed persons, by producing false certificates as belonging to Scheduled Tribes, have been capturing or cornering seats or vacancies reserved for Scheduled Tribes, defeating the very purpose for which the provisions are made in the Constitution. 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 benefit 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.

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

1. 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.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the 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 the Parliament by law and by no other authority.

4. It is not open to the State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes, specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. AnirudhPatar*[8]and *Dina v. Narayan Singh* [9] did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above, no enquiry at all is permissible and no evidence can be let in, in the matter.

19. The above findings were given on the question as to whether 'HalbaKosthi' is a sub-tribe within a meaning of Entry-19 'HalbaHalbi', and I just feel persuaded to quote in extenso the reasonings and findings recorded by Hon'blethe Supreme Court in para 15 to 33 (of J.T.) : (paras 14 to 32 of AIR 2001 Supreme Court 393), which is as under :-

15. Thus it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons, in order to gain advantage in securing admission in educational institutions and employment in State Services, have been claiming as belonging to either Scheduled Castes or Scheduled Tribes, depriving genuine and needy persons, belonging to Scheduled Castes and Scheduled tribes covered by the Presidential Orders, defeating and frustrating, to a large extent, they very object of protective discrimination given to such people, based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste, a group or part or tribe or sub- tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and

vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States, through Governors of States, which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is the Parliament that is in a better position to know, having means and machinery unlike Courts, as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or Courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Articles 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the Courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within presidential Orders when it is not so expressly included.

16. In *B. Basavalingappa v. D. Munichinnappa,* [10] a Constitution Bench of this Court has held thus :-

"It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name, it has been mentioned in brackets, after it, in the order [see Aray (Mala) Dakkal (Dokkalwar) etc.] Therefore, generally speaking, it would not be open to any person to lead evidence to establish that Caste B (in the example quoted above) is part of Caste A notified in the Order. Ordinarily,

therefore, it would not have been open in the present case to give evidence that the Voddar Caste was the same as the Bhovi Caste, specified in the Order for Voddar Caste is not mentioned in brackets after the Bhovi Caste in the Order."

17. Thereafter, looking to the peculiar circumstances of the case, the Court went on to say that :-

"The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organization of 1956, there was no caste known as Bhovi at all. The Order refers to a Scheduled Caste known as Bhovi in the Mysore State as it was before 1956 and, therefore, it must be accepted that there was some caste which the President intended to include, after consultation with the Rajpramukh in the Order when the Order mentions the caste Bhovi as a Scheduled Caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was meant by Bhovi, is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi Caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstances, therefore, which necessitated the taking of evidence to determine which was the caste which was meant by the word

"Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956."

18. Again a Constitution Bench of this Court in a later decision in *Bhaiyalal v. Harikishan Singh* [11]did not accept the plea of the appellant that although he was not a Chamar as such he could claim the same status by reason of the fact that he belonged to Dohar Caste which is sub-caste of Chamar. Even after referring to the case of Basavallingappa (supra) it was held that an enquiry of that kind would not be permissible in the light of the provisions contained in Article 341 of the Constitution. In that case, the appellant's election was challenged *inter*

alia on the ground that he belonged to the Dohar Caste which was not recognized as a Scheduled Caste for the district in question and so his declaration, that he belonged to the Chamar Caste which was a Scheduled Caste, was improper and was illegally accepted by the Returning Officer. The Election Tribunal declared that the election was invalid. On appeal, the High Court confirmed the same. This Court also dismissed the appeal, pointing out that the plea that the Dohar Caste is a sub-caste of the Chamar Caste, could not be entertained in view of the Constitution Scheduled Castes Order, 1950, issued by the President under Article 341 of the Constitution. It is also stated that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The notification referred to Chamar, Jatav or Mochi. The Court observed that the enquiry, which the Election Tribunal could hold was whether or not the appellant is a Chamar, Jatav or Mochi and held thus :-

"The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341."

19. Referring to the case of Basavallingappa : (AIR 1965 Supreme Court 1269) (supra) the Court explained thus :-

"In the case of *B. Basavalingappa v. D. Munichinnappa*, this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent No.1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would : "It may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and, therefore, must be deemed to be included in Caste A". That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to

be included in the Order; cannot be accepted."

20. It may be noticed that in both the Constitution Bench judgment (supra), P. B. Gajendragadkar, C. J., K. N. Wanchoo, and M. Hidayatullah, JJ were common members.

21. In *Parasram v. Shivchand (1969) 2 SCR 997 : (AIR 1969 Supreme Court 597)*, referring to the two Constitution Bench judgments of this Court in Basavalingappa (AIR 1965 Supreme Court 1269) and Bhaiyalal : (AIR 1965 Supreme Court 1557) aforementioned, this Court declared that (at Pp. 599-600 of AIR) :-

"These judgments are binding on us and we do not, therefore, think that it would be of any use to look into the gazetteers and the glossaries on the Punjab castes and tribes, to which reference was made at the Bar, to find out whether mochi and chamar in some parts of the State at least, meant the same caste, although there might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which mochis do not. However, that may be, the question not being open to agitation by evidence and being one, the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a mochi, he could still claim to belong to the Scheduled Castes of Chamars and be allowed to contest an election on that basis."

22. In that case, a good deal of evidence was adduced and arguments were advanced as to whether the words 'Chamar' and 'Mochi' were synonymous. This Court further observed :-

"Once we hold that it is not open to this Court to scrutinize whether a person who is properly described as a mochi also falls within the caste of chamars and can describe himself as such, the question of the impropriety of the rejection of his nomination paper based such distinction, disappears."

23. In two cases, *Bhaiya Ram Munda v. AnirudhPatar*[12] and*Dina v. Narayan Singh,* [13] Division Benches of this Court took a contrary view to say that evidence is admissible for the purpose of showing what an Entry in the Presidential Order was intended to be while stating that the Entries in the Presidential Order have to be taken as final and the scope of enquiry and

admissibility of evidence is confined within the limitations indicated.

24. A three-Judge bench of this Court in *Sirsh Kumar Choudhary v. State of Tripura*[14]referring to the two Constitution Bench judgments (supra) and the Division Bench judgments of BhaiyaramMunda (AIR 1971 Supreme Court 2533) and Dina (supra) has held thus (para 20 of AIR) :-

"The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community; but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant, representing the Laskar community to be included in the Scheduled Tribes is genuine and should, therefore, be entertained."

25. Yet again, a three-Judge Bench of this Court in *PalghatJillaThandanSamudhyayaSamrakshnaSamithi v. State of Kerala*[15]has held that neither the State Government nor the Court can enquire into or let in evidence, relating to any claim as belonging to Scheduled Castes in any Entry of the Scheduled Castes Order. Scheduled Castes Order has to be applied as it stands until the same is amended by appropriate legislation. Para 20 of the said judgment reads thus :-

"Learned Counsel for the State relied upon the decision in *Bhaiya Ram Munda v. AnirudhPatar*[16] referred to in paragraph 15 of the judgment in Sirish Kumar Choudhary case (AIR 1990 Supreme Court 991) for the view taken there was that evidence was admissible for the purpose of showing what an Entry in the Presidential Order was intended to mean. In paragraphs 8, 9, 10 and 11 of the judgment, in Sirish Kumar Choudhary's case, the Constitution Bench judgments referred to above are discussed, as also two other judgments taking the same view. Then, in paragraph 14, the judgments of this Court in the case of *Dina v. Narayan Singh* and *Bhaiya Ram Munda v. AnirudhPatar* are referred to and it is stated that both were rendered by the same Bench of two learned Judges. Paragraph 14 goes on to set out the substance of the decision in Dina's case and paragraph 15 sets out the substance of the decision in Bhaiya Ram's case. In paragraph 16 it is said. "These authorities clearly indicate, therefore, that the

Entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order." There is, therefore, no doubt that the Court in Sirish Kumar Choudhary case accepted and followed, as it was bound to do, the Constitution Bench judgments and not the two-Judge judgments in the Dina and Bhaiya Ram Munda cases."

26. In *Nityanand Sharma v. State of Bihar* [17]the view expressed is that it is for the Parliament to amend the law and the Schedule to include or exclude from the Schedule, a tribe or tribal community or part of or group within a tribe or tribal community in the State, District or Region and its declaration is conclusive. The Court has no power to declare synonymous as equal to the tribes specified in the Order or include in or substitute any caste /tribe etc.

27. In the impugned judgment, the High Court refers to the two Constitution Bench judgments in Basavalingappa and Bhaiyalal and also notes statement made in the said decisions that "It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and, therefore, must be deemed to be included in Caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it, in the Order (See Aray (Mala), Dakkal (Dokkalwar) etc.) Therefore, generally speaking, it would not be open to any person to lead evidence to establish that Caste B (in the example quoted above) is part of Caste A notified in the Order. Ordinarily, therefore, it would not have been open in the present case to give evidence that the Voddar Caste was the same as the Bhovi Caste specified in the Order for Voddar Caste is not mentioned in brackets after the Bhovi Caste in the Order ". "However that may be, the question not being open to agitation by evidence and being one, the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a Mochi, he could still claim to belong to the Scheduled Caste of Chamars and be allowed to contest an election on that basis." The High court again, in paragraph 24 of the impugned judgment, observed that, "it is quite clear that the list once prepared by the President can be amended only by the "Parliament and by none else." Having said so, the High Court went wrong in relying on Division Bench

judgments of this Court in the cases of Bhaiya Ram Munda, (AIR 1971 Supreme Court 2533) and Dina and the Full Bench decision of Orissa High Court in *K. AdikandaPatra v. Gandua,* [18]to take a contrary view in saying that there was no legal bar in holding enquiry as to whether 'Halba- Koshti' is a part and parcel or sub-division of 'Halba/Halbi' or not. We have no hesitation in saying that the High Court committed a serious error in not following the aforementioned two Constitution bench judgments of this Court and preferring to follow Division Bench judgments of this Court and the Full Bench judgment of Orissa High Court which did not lay down the law correctly on the question.

28. Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the concerned entry in the Presidential Order when it is not so expressly or specifically included. Hence, we answer the question No.1 in negative.

29. The Director of Social Welfare, Maharashtra, Pune (R6) on an elaborate enquiry by a reasoned and detailed order invalidated the caste certificate issued to respondent No.1 as belonging to 'Halba' Scheduled Tribe. The Additional Tribal Commissioner, Nagpur Division, Nagpur (R5), on further enquiry in the appeal filed by the respondent No.1, dismissed the appeal by a well merited order passed on detailed and objective consideration and evaluation of the evidence placed on record. The feeble argument, based on circulars issued by the State Government, advanced on behalf of the respondent No.1 was that the old records relating to undisputed point of time and the school certificate would have been accepted, was rejected for the reasons stated in the orders passed by the Director of Social Welfare and the Additional Tribunal Commissioner-the appellate authority. The Scrutiny Committee, as is evident from its decision dated 16-11-1983, found that the word 'Halba' in the service book entry in respect of uncle of respondent No.1, was written in a different ink and it was unworthy of credence; the census report of the year 1931 of the Khapa town did not show even a single digit population of Halba /Halbi Tribe; the respondent No.1 gave answer to the questionnaire that he was not aware about the traits and characteristics, customs, deities, religious beliefs etc. of the Halba Tribe. On further enquiry in the appeal, it was revealed that the entry at Sr. No. 3065 in

the DakhalKharij Register of the Municipal Primary School, Shendurjunaghat, Amravati of the year 1944-45 shows that caste of Sharad, son of Bajirao, father of the respondent No.1 was Koshti; in the birth Register of Khapa town, the entry dated 2-5-1934 related to a female child, Shantabai, born to ShriBajirao revealed the caste of ShriBajirao as Koshti; entry at Sr. No. 913 in the register maintained by the Municipal Primary School, Khapa, for the period of 1918-1932 in respect of said Bajirao was shown as belonging to 'Koshti' caste and his occupation was shown in the separate column as 'weaving'. The appellate authority took note of the preponderance of uninterrupted and consistent evidence of over 150 years, comprising of official publications and authorities like the Imperial and District Gazetteers, Revenue Settlement Reports, Decennial Census reports and works of renowned Sociologists and Ethnographers. Thus, having regard to the evidence and material on record, the appellate authority concluded that the 'Koshti' Caste, on one hand, and the 'Halba' Tribe, on the other, constituted two different and distinct entities. After reading the said orders, we find that the authorities rightly rejected the claim of the respondent No.1 as belonging to Scheduled tribe. It must be stated here itself that the High Court did not go into the correctness of the findings of fact recorded by these two authorities in negativing the claim of the respondent No.1. It proceeded to hold in favour of respondent No.1, on other grounds to which we will refer hereafter. Even otherwise, looking at the evidence placed on record and the detailed reasons given by the respondents 6 and 5 in their orders, it is not possible to say that the orders passed by them were not based on evidence or they were unsustainable for any reason. Merely because a school certificate has to be taken as valid as stated in a circular by the State Government, it was not conclusive in the light of clinching and telling evidence against the claim of the respondent No.1 and in view of the circulars /instructions issued by the Central Govt. and other circulars of the State Government holding the field.

30. The High Court, to support its view that 'Halba/Koshti' is included in 'Halba' or 'Halbi' Tribe, relied on the following decisions of High Courts - (1) *Sonabai v. Lakshmibai,* [19]decided by the Division Bench of erstwhile Nagpur High Court; (2) *MadhukarDekate v. Dean of the Medical College, Nagpur, (Letter Patent Appeal No. 157/1955, decided on 4th August, 1957* by a Division Bench of Madhya Pradesh High Court); (3) *Sunit Nana Umredkar v. Dr. V. G. Ranade*[20]by a Division Bench of Bombay High Court); (4) *PrabodhParhate v.*

The State of Madhya Pradesh [21]by Division Bench of Madhya Pradesh High Court); (5) *AbhayParate v. State of Maharashtra ,*[22]a decision of the Division Bench of the Bombay High Court; (6) *Ku. KalpanaBhishikar v. Director of Social Welfare,* [23] by Division Bench of Bombay High Court). In paragraph 16 of the impugned judgment, the High Court has stated thus :-

"It is submitted on behalf of the petitioners that these decisions rendered during a long span of over 34 years by different Benches of different High Courts consistently holding that "HalbaKoshti" is "Halba" must have or in any case, reasonably supposed to have affected the course of life of a large portion of the community and now taking a different view, would lead to uncertainty and chaos and hence, we should desist from making a departure. We see considerable force in the submission, specially in the background of the undisputed position that even the Government recognized "HalbaKoshtis" as "Halba" for a long period of nearly ten years between 1967 to 1977 by issuing circulars/instructions from time to time."

31. The High Court applied the doctrine of stare decisis on the grounds that the decisions referred to above were considered judgments; even Government accepted their correctness in the Courts; that State Government independently took the same view after repeated deliberations for number of years; taking a contrary view would lead to chaos, absurd contradictions, resulting in great public mischief. In our view, the High Court was again wrong in this regard. The learned senior Counsel for the respondent No.1 was not in a position to support his reasoning listed above, except the first two decisions, all other decisions were rendered subsequent to two constitution Bench judgments (supra) of this Court. The first two judgments were delivered in 1956 and 1957. In this view, the High Court was not right in stating that the decisions were rendered during a long span of over 34 years by different Benches of different High Courts consistently holding that 'Halba-Koshti', is 'Halba'. The rule of stare decisis is not inflexible so as to preclude a departure therefrom, in any case, but its application depends on facts and circumstance of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex-facie illegal, more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this

Court, that too concerning the interpretation of the provisions of the Constitution. The remaining decisions were contrary to the law laid down by this Court. This Court in *Maktul v. Manbhari,* [24]adopting the statement of law found in Halsbury and Corpus JurisSecundum observed thus :-

"But the Supreme appellate Court will not shirk from overruling a decision, or series of a decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain and no general course of dealing to be altered by the remedy of a mistake". (fromHalsbury). "Because decisions should not be followed to the extent that grievous wrong may result and accordingly, the Courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result"

(From Corpus JurisSecundum)

The decisions relied on by the High Court to apply the doctrine of stare decisis, firstly, were not holding the field for long time. Secondly, they are evidently contrary to the constitutional provisions. Thirdly, all the decisions rendered by the High Courts after 1965 were not consistent with the law laid down by this Court. Fourthly, if the view of the High Court is accepted, it will lead to absurd, unjust and ex-facie illegal results running contrary to Articles 341 and 342 of the Constitution. Fifthly, this Court in *State of Maharashtra v. Abhay, AIR 1985 Supreme Court 328*, specifically had kept open the larger question whether 'Halba-Koshti' is Halba. The High Court in the impugned judgment refers to this decision but only states that the said judgments shall govern the petitioner only. Sixthly, all the said decisions were not directly on the point, relating to Scheduled Tribes Order issued under Article 342 of the Constitution; some of the cases arose out of civil disputes involving adoption. Seventhly, even the State Government was not consistent in its stand, touching the issue whether "Halba-Koshtis" were 'Halba/Halbi' to consider them as Scheduled Tribes. As early as on 20-7-1962 itself, a circular was issued to the effect that 'Halba-Koshtis' were not Scheduled Tribes. Further a look at the various circulars /resolutions /instructions/ orders, referred to in paragraphs 20 to 22 of the

impugned judgment, makes it clear that the controversy was not settled. Hence, it cannot be said that the view, 'Halba-Koshti' was 'Halba/Halbi' Scheduled tribe was holding the field for long time. There arose no question of unsettling or upsetting the position in law which itself was not a settled one, till first constitution judgment in Basavalingappa case was delivered by this Court. Per contra, the impugned judgment runs contrary to the law clearly settled by various judgments of this Court.

32. Thus, the High Court was not right in invoking and applying the doctrine of stare decisis on the facts and in the circumstances of the case.

33. The High Court in paragraphs 20 to 23 dealt with circulars /resolutions /instructions/orders made by the Government from time to time on the issue on 'Halba-Koshtis'. It is stated in the said judgment that upto 20-7-1962 'Halba-Koshtis' were treated as 'Halbas' in the specified areas of Vidarbha. Government of Maharashtra, Education and Social Welfare Department issued Circular No. CBC 1462/3073/M to the effect that 'Halba-Koshtis' were not Scheduled Tribes and they are different from 'Halba/Halbis',. In the said circular it is also stated that certain persons not belonging to 'Halba' Tribe have been taking undue advantage and that the authorities competent to issue Caste Certificates should take particular care to see that no person belonging to 'Halba-Koshtis' or 'Koshti' community is given a certificate, declaring him as member of Scheduled Tribes. On 22-8-1967, the above mentioned Circular of 20-7-1962 was withdrawn. Strangely, on 27-9-1967, another Circular No. CBC 1466/9183/M was issued showing the intention to treat 'Halba-Koshti' as 'Halba'. On 30-5-1968 by letter No. CBC-1468-2027-O, the State Government informed the Deputy Secretary to the LokSabha that 'Halba-Koshti' is 'Halba'/'Halbi' and it should be specifically included in the proposed Amendment Act. Government of Maharashtra on 29-7-1968 by letter No. EBC- 1060/49321-J-76325 informed the Commissioner for Scheduled Castes and Scheduled Tribes that 'Halba-Koshti' community has been shown included in the list of Scheduled Tribes in the State and the students belonging to that community were eligible for Government of India Post Matric Scholarships. On 1-1-1969, Director of Social Welfare, Tribal Research Institute, Pune, by his letter No. TRI/I/H.K./68-69 stated that the State Government could not in law amend the Scheduled Tribe Order and that a tribe not specifically included, could not be treated as Scheduled Tribe. In this view, the Director sought for clarification. The

Government of India, on 21-4-1969, wrote to the State Government that in view of Basavalingappa's case (AIR 1965 Supreme Court 1269) (supra) 'Halba-Koshti' community could be treated as Scheduled Tribe only if it is added to the list as a sub-tribe in the Scheduled Tribes Order and not otherwise. Thereafter, few more circulars were issued by the State Government, between 24-10-1969 and 6-11-1974 to recognize 'Halba-Koshtis' as 'Halbas' and indicated as to who were the authorities competent to issue certificates and the guidelines were given for enquiry. There was again departure in the policy of the State Government by writing a confidential letter No. CBC- 1076/1314/Desk-V, dated 18-1-1977. Government informed the District Magistrate, Nagpur, that 'Halba-Koshtis' should not be issued 'Halba' Caste Certificate. Thereafter, few more circulars, referred to in paragraph 22 of the judgment, were issued. It may not be necessary to refer to those again except to the circular, dated 31-7-1981 bearing No. CBC-1481/(703)/D. V., by which the Government directed that until further orders insofar as 'Halbas' are concerned, the school leaving certificate should be accepted as valid for the purpose of the caste. Vide Resolution dated 23-1-1985, a new Scrutiny Committee was appointed for verification of castes certificates of Scheduled Tribes. The High Court had observed in paragraph 23 of the judgment that several circulars issued earlier were withdrawn but the said circular dated 31-7-1981, was not withdrawn. For the first time on 8-3-1985, the Scrutiny Committee was authorized to hold enquiry if there was any reason to believe that the certificate was manipulated or fabricated or had been obtained by producing insufficient evidence. Referring to these circulars/resolutions, the High Court took the view that the caste certificate issued to the respondent No. 1 could be considered as valid and upto 8-3-1985, the enquiry was governed by circular dated 31-7-1981. The High Court dealing with the stand of the State Government on the issue of 'Halba-Koshtis', from time to time, and also referring to circulars/ resolutions /instructions held in favour of the respondent No. 1 on the ground that the appellant was bound by its own circulars/orders.

No doubt, it is true, the stand of the appellant as to the controversy relating to 'Halba-Koshtis' has been varying from time to time but in the view we have taken on question No. 1, the circulars /resolutions/ instructions issued by the State Government from time to time, some time contrary to the instructions issued by the Central Government are of no consequence. They could be simply ignored as the State Government had neither authority nor competency to

amend or alter the Scheduled Tribes Order. It appears, taking note of false and frivolous claims being made by persons not entitled to claim such status, the Government of India addressed letters and issued instructions between the period from 21-4-1969 to 1982 to impress that there should be strict enquiry before issuance of caste certificates to persons claiming Scheduled Caste/Scheduled Tribe status; strict scrutiny into the caste of the parent should be effected as a check-point. The State Government issued Resolution dated 29-10-1980 in consonance with the instructions given by the Central Government, laying down the guidelines on which the enquiry should be held before issue of Caste Certificate. Another Resolution dated 24-2-1981 was also issued for appointing a scrutiny committee to verify whether the Caste Certificate has been issued to person who is really entitled to it in view of the complaints of misuse of reservational benefits on a large scale. These Resolutions were operative as they had not been repealed. This Court in its judgment dated 19-10-1984 *State of Maharashtra v. Abhay AIR 1985 Supreme Court 328*, directed that the State of Maharashtra should devise and frame a more rational method for obtaining, much in advance, a certificate on the strength of which a reserved seat is claimed. But the High Court committed an error in interpreting the scope of the Circular, dated 31-7-1981, that the School Leaving Certificate was conclusive of the caste. This interpretation was plainly inconsistent with the instructions and resolutions stated above. Further, it may be also noticed here that the Joint Parliamentary Committee did not make any recommendation to include 'Halba-Koshti' in the Scheduled Tribes Order. At any rate, the Scheduled Tribes Order must be read as it is until it is amended under Clause (2) of Article 342. In this view also, the circulars/resolutions/instructions will not help the respondent No. 1 in anyway. Even otherwise, as already stated above, on facts found and established, the authorities have rejected the claim of the respondent No. 1 as to the Caste Certificate. The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record. The jurisdiction of the High Court would be much more restricted while

dealing with the question whether a particular caste or tribe would come within the purview of the notified Presidential Order, considering the language of Articles 341 and 342 of the Constitution. These being the parameters and in the case in hand, the Committee conducting the inquiry as well as the Appellate Authority, having examined all relevant materials and having recorded a finding that respondent No. 1 belong to 'Koshti' caste and has no identity with the 'Halba/Halbi', which is the Scheduled Tribe under Entry 1 of the Presidential Order, relating to State of Maharashtra, the High Court exceeded its supervisory jurisdiction by making a roving and in-depth examination of the materials afresh and in coming to the conclusion that 'Koshtis' could be treated as 'Halbas'. In this view, the High Court could not upset the finding of fact in exercise of its writ jurisdiction. Hence, we have to essentially answer the question No. 2 also in the negative. Hence it is answered accordingly.

20. In view of the above legal position, the question then arises is as to how to determine even the identity of the caste of the person claiming to be belonging to a particular caste. It is well nigh possible, and as the Courts are coming across incidents day in and day out, that persons belonging to different castes have started laying claim of belonging to a different caste, which may be included in the Scheduled Caste or Scheduled Tribe, and the nomenclature may be having a spelling based, or pronounciational synonymy, and obtain a certificate on that basis, and thereby capture or corner the seats or vacancies reserved for Scheduled Caste and Scheduled Tribe and thus defeat the very purpose for which the provisions are made in the Constitution. In view of the findings given by Hon'ble Supreme Court and the sentiments expressed in Milind's case, AIR 2001 Supreme Court 393 it is high time that the tendency is to be checked and effectively curbed.

21. In this direction, I feel persuaded to observe and consider that with the population fusion and extensive migration, the old caste structure, which was, and which is the basis for the Constitutional protections is substantially narrowing down so far as the parts of the States to which the benefit was required to be conferred. Now, even the persons belonging to particular classes have come up in the main stream, and have substantially migrated to even other parts of the same state, apart from other part of the country, and by adopting different forward caste names as suffix to their name, they have practically lost the identity of their birth mark, but in order, only to gain, rather to capture or corner the seats or vacancies reserved for Scheduled Caste and Scheduled Tribe, they adopt all ways and means to obtain certificates from small local

officers, one does not know, may be even by manipulations. Be that as it may.

22. In these circumstances, the first being required to be done by the State Government is to undertake a survey, and prepare an appropriate data base, and now in view of the Election Commission having issued Photo Identity Cards to have the data base with the Photo Identity Card of the population which belongs to the specific reserved class in specific area on the basis of the parameters like food habits, dress, social customs, religious faiths, occupation, educational level etc. (or on such basis on which a caste is identified), so also to maintain a complete up date of the data base by having regular updation based on the new births, deaths, and migrations, so as to ensure, with migration if that particular caste is not reserved caste in migrated area so that one may not get the benefit. Secondly, it is high time that such survey is re-undertaken with regular intervals for the purpose of ensuring that the persons and the families identified to be belonging to a particular caste, or community, or tribe are continuing to suffer the disadvantages on account of their birth mark, food habit, dress, social customs religious faith, occupation, and educational level etc. on account of which they were given the special protection, and in case of the persons, or families, or castes who are identified to be not so disadvantaged in any particular area, steps should be taken for issuance of appropriate amendment by the Parliament for their exclusion from the protected field.

23. However, till all this is done, even for the present purposes where difficulties are being faced day in and day out, one solution can be that the person seeking certificate of belonging to a particular caste, should be able to satisfy the authorities concerned about his fulfilling the criterions which led to inclusion of that caste in the notification like dress, food habits, social customs, religious faiths, educational level, occupation, and present residence of the person in that particular part of the State. The other solution can be to *prima facie* take the person to be belonging to the caste which he mentions as suffix to his name, and find as to whether that particular nomenclature finds place as a caste or tribe in the notification, and in case of doubt like the person using the nomenclature of a particular notified caste or tribe but not belonging to that caste or tribe, appropriate enquiry may be made by the competent local authorities concerned, on the parameters, and in the manner, as considered and contemplated by the Constitutional Bench in Milind's case, AIR 2001 Supreme Court 393. The obvious reason is that there is no authentic record about the number of families and including their descendants in each particular caste or sub-caste in any particular part of the State, all over the country, and the caste is not a thing which can be determined on any

sure shot basis like DNA Test, for the purpose of constitutional benefits available on account of the caste being notified under Article 341 or 342, the obvious reason being that inclusion of the caste in the notification is not merely on the basis of birth mark, but on the basis of the particular caste being suffering from social handicap, and educational backwardness besides other disadvantages.

24. In the present case, the petitioner claims to be Maya Devi Dagala. Admittedly, Dagala, according to any of the notifications issued under Article 341 or 342 of the Constitution, is not shown to be included either in Scheduled Castes, nor Scheduled Tribes, nor Backward Castes. However, she has chosen to allege, that she belongs to a particular community, either alleging to be It is a different story that out of the three castes, the petitioner has not even chosen any-one and has claimed to be belonging to all the three which obviously is an impossibility. That apart, she has been able to obtain the certificate to be belonging to Scheduled Caste but then she is insistent on obtaining the certificate to be belonging to Scheduled Tribe, as one of the aforesaid three castes also finds place in the list of Scheduled Tribe, though it is reported that the social customs of the two are materially different. In these circumstances, in view of the above legal position, in my view, any jurisdiction cannot be conceded to any of the authorities, even including this Court, to entertain an inquiry, as to whether Dagalaisor is any caste, sub-caste, races, or tribe of -

25. In that view of the matter, irrespective of the question, as to whether the caste uk;d falls within Scheduled Castes, or Scheduled Tribes, or Backward Castes, admittedly, when Dagala doesn't fall within any categories, it is not open to any of the authorities, to undertake any inquiry, simply because, the petitioner alleges to be belonging to a particular other caste, falling within any of the lists of Scheduled Castes, Scheduled Tribes, or other Backward Castes.

26. In the background of the above discussion, since the petitioner claims to be Maya Devi Dagala, and as 'Dagala' neither finds place in the list of Scheduled Castes, nor Scheduled Tribes, nor Other Backward Castes, the certificate even granted to the petitioner, being Annexure 5, cannot hold good. However, since that is not challenged before me, I am not inclined to grant any relief to the petitioner.

27. The writ petition is, therefore, dismissed summarily.

Petition dismissed.

Cases Referred.

1. AIR 1965 SC 1557
2. AIR 1990 SC 991
3. (1996) 2 JT (SC) 117
4. (1994) 4 JT (SC) 423: (1994 AIR SCW 3305)
5. AIR 1965 SC 1269
6. (1997) 3 JT (SC) 206
7. 2000 Supp (3) JT (SC) 213: (AIR 2001 SC 393)
8. (1971)1 SCR 804: (AIR 1971 SC 2533)
9. (1968) 38 ELR 212
10. (1965)1 SCR 316: (AIR 1965 SC 1269)
11. (1965) 2 SCR 877: (AIR 1965 SC 1557)
12. (1971) 1 SCR 804: (AIR 1971 SC 2533)
13. (1968) 38 ELR 212
14. (1990)2 JT (SC) 27: 1990 Supp SCC 220: (AIR 1990 Supreme Court 991)
15. (1993) 6 JT (SC) 622: (1994) 1 SCC 359
16. (AIR 1971 SC 2533)
17. (1996)2 JT (SC) 117: (1996) 3 SCC 576: (AIR 1996 Supreme Court 2306)
18. AIR 1983 Orissa 89
19. 1956 Nag LJ 725: (AIR 1957 Nag 76)
20. (Writ Petition No. 2404 of 1980, decided on 24th September, 1980
21. (Writ Petition No. 1450 of 1981 decided on 21st January, 1982
22. 1984 Mah. LJ 289: (AIR 1985 Bom 45)
23. (Writ Petition No. 95 of 1985 decided on 14th February, 1985)
24. SCR 1099: (AIR 1958 Supreme Court 918), 1959