



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Writ Petition No.3443 Of 1990

* Nanda D/o Yadavrao Shankhpale,]
Age 19 years,]
Occupation Student,]
R/o Girls Hostel,]
Government Medical College,]
Nanded.] .. Petitioner.

Versus

- 1) The State of Maharashtra]
Through its Secretary]
Tribal Development Department,]
Mantralaya, Bombay - 32.]
- 2) The Scheduled Tribes Certificate]
Scrutiny Committee]
(Through the Chairman and]
Director, Tribal Research and]
Training Institute)]
M.S., Pune.]
- 3) The Additional Commissioner,]
Tribal Development Department]
Nasik.]
- 4) The Dean,]
Government Medical College,]
Nanded.]
- 5) The Dean,]
Government Medical Collage,]
Aurangabad.] .. Respondents.

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Shri. S.B. Talekar, Advocate for the petitioner.

Shri. Umakant K Patil, Assistant Government Pleader, for
respondents Nos.1,3,4 and 5.

Shri. M.S. Deshmukh, Advocate, for respondent No.2.

...

With

Writ Petition No.2641 Of 1992

*	Madhav S/o Yadavrao Shankhpale,]	
	Aged 28 years,]	
	Occupation Service]	
	R/o C/o U.P. Debadwar,]	
	Executive Engineer,]	
	P.W.D. Quarters,]	
	Aurangabad.]	...Petitioner.

Versus

1)	The State of Maharashtra]	
	Through its Secretary]	
	Public Works Department,]	
	Mantralaya, Bombay - 32.]	
]	
2)	The Principal and Chief]	
	Engineer, Staff Engineering]	
	College, Dindori Marg,]	
	Nasik.]	
]	
3)	The Scheduled Tribes Certificate]	
	Scrutiny Committee]	
	Through its Chairman and]	
	Director, Tribal Research and]	
	Training Institute,]	
	28, Queen's Garden, Pune - 1.]	.. Respondents

...

Shri. S.B. Talekar, Advocate, for petitioner.

Shri. Umakant K Patil, Assistant Government Pleader, for respondents Nos.1 and 2.

Shri. M.S. Deshmukh, Advocate, for respondent No.3.

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With

Writ Petition No.2818 Of 2004

* Madhav S/o Yadavrao Shankhpale,]
Aged 40 years,]
Occupation Service]
R/o Naikwada Gully, Biloli,]
District Nanded]
Presently working in the office]
the Executive Engineer,]
Public Works Division,]
Ambajogai, District Beed.] ... Petitioner.

Versus

1) The State of Maharashtra]
Through its Secretary,]
Public Works Department,]
Mantralaya, Mumbai - 32.]
]
2) The Committee for Scrutiny]
& Verification of Tribe Claims]
MS Aurangabad]
Through its Member Secretary.]
]
3) The Tahsildar and Taluqa]
Executive Magistrate, Biloli,]
District Nanded.]
]
4) The Collector & District]
Magistrate, Nanded.]
]
5) The Union of India]
Through its Secretary]
Parliamentary Affairs]
Department, New Delhi.] ... Respondents.

...

Shri. S.B. Talekar, Advocate, for petitioner.

Shri. Umakant K Patil, Assistant Government Pleader, for
respondents Nos.1,3 and 4.

Shri. M.S. Deshmukh, Advocate, for respondent No.2.

Shri. Alok Sharma, Assistant Solicitor General with Shri. Ruturaj Patil, Standing Counsel, for respondent No.5.

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CORAM: NARESH H. PATIL, & R.M. BORDE, JJ.

Judgment reserved on : **23th FEBRUARY 2007**

Judgment pronounced on: **5th APRIL 2007**

JUDGMENT (Per Naresh H Patil, J.) :--

1) These petitions arise out of identical and common issues. Therefore, we propose to finally dispose of these petitions by a common judgment and order.

2) In Writ Petition No.2818 of 2004 we grant Rule returnable forthwith. Learned counsel for the respective respondents waive service. By consent of the parties this writ petition is also taken up for final hearing.

3) The petitioner in Writ Petition Nos.2641 of 1992 and 2818 of 2004 is the same i.e. Madhav Shankhpale who is brother of Nanda Yadavrao Shankhpale, petitioner in Writ Petition No.3443 of 1990.

4) The conspectus of the matter unfolded from the pleadings of the parties is described as below.

5) Madhav Shankhpale, one of the petitioners, claims

to be belonging to "Mahadeo Koli", Scheduled Tribe. The tribe claim of the petitioner was initially verified and by an order dated 14-10-1982 passed by the Director of Social Welfare, Maharashtra State, the certificate issued in favour of petitioner Madhav by the Taluka Executive Magistrate Biloli on 5-7-1982 was declared as invalid. Petitioner Madhav filed an appeal before the Divisional Commissioner Aurangabad against the order passed by the Director, Social Welfare. The appeal was allowed on 30-3-1983 and the decision of the Director of Social Welfare dated 14-10-1982 was set aside with a declaration that the petitioner Madhav belongs to "Mahadeo Koli", Scheduled Tribe.

6) The petitioner Madhav was selected for the post of Assistant Engineer Class II, reserved for scheduled tribes. The Public Works Department of the Government of Maharashtra, referred the tribe claim of the petitioner to the Scrutiny Committee for the purpose of verification. The Committee invalidated the tribe claim of the petitioner Madhav by an order dated 19-9-1992. The said order of the Committee is the subject matter of Writ Petition No.2641 of 1992 filed by petitioner Madhav. The petition was admitted and interim relief in terms of prayer clause (D) was granted by this Court on 21-10-1992 by which the respondents were restrained from terminating

the services of the petitioner or taking any prejudicial action against the petitioner Madhav on the basis of the impugned order.

7) In the meanwhile, the tribe claim of the younger brother of the petitioner named Rajesh as belonging to "Mahadeo Koli", Scheduled Tribe, was invalidated by the Scrutiny Committee by an order dated 28th March 1988 which order was confirmed by the appellate authority vide judgment and order dated 30th March 1988 in Appeal No.130/1988. Rajesh challenged the orders of the Committee and the Appellate Authority in Writ Petition No.912 of 1988. The writ petition filed by Rajesh was dismissed by a Division Bench of this Court (**Coram: S.H. Kapadia and B.H. Marlapalle, JJ**) on 5th May 1999. While disposing of the petition the Division Bench issued following directions:

"... Further, the Scrutiny Committee - respondent No.2 is hereby directed to reconsider the Judgment of the Divisional Commissioner, Aurangabad in the Case No. R.S. Desk II O & M, MAG. 43/82 decided on 30th March 1983 in favour of Madhav Yadavrao Shankapale in the light of this Judgment and decide his tribe claim afresh within a period of four months from the receipt of Writ of this Court."

Pursuant to the notice issued by the Scrutiny Committee in

furtherance of the direction of the Division Bench of this Court the petitioner appeared before the Committee. The Scrutiny Committee by an order dated 3rd March 2004 invalidated the tribe claim of the petitioner Madhav and the certificate issued in his favour was directed to be cancelled and confiscated. The petitioner raises challenge to the order of the Scrutiny Committee in Writ Petition No.2818 of 2004.

8) Rajesh Yadavrao Shankhpale, the brother of the petitioner, filed Civil Application No.19365 of 2003 in Writ Petition No.912 of 1988 for review of the judgment and order passed by the Division Bench on 5th May 1999. A Division Bench of this Court (**Coram: B.H. Marlapalle & N.V. Dabholkar, JJ**) dismissed the review petition on 27-4-2004 by observing :

"2. This review petition has been presented on 24th July 2003 and as per the office note there is delay of four years and one hundred days. A separate application for condonation of delay has not been filed. However, a prayer has been made to condone the delay in the review petition. Shri. S.B. Talekar now states that a separate application for condonation of delay has been submitted but the same is not seen on record with this review petition and he is unable to furnish its stamp number if the same has been filed. In this review application no ground for condonation of delay has been made out.

3. Even otherwise we have gone through

the averments made in this review application and the very same grounds which were raised in the writ petition have been reiterated. Shri. M.S. Deshmukh, learned Standing Counsel for the Scrutiny Committee states that the applicant's brother's caste claim has already been invalidated.

4. Be that as it may, the grounds for review do not commend to us. The review application, therefore, fails on both the counts."

Rajesh filed Special Leave Petitions against the order of rejection of the review petition by the Division Bench of this Court dated 27-4-2004 and against the judgment and order dated 5-5-1999 delivered in Writ Petition No.912 of 1988 by Division Bench (**Coram: S.H. Kapadia & B.H. Marlapalle, JJ.**). The Supreme Court on 9-8-2004 passed following order on the Special Leave Petitions.

"We are in agreement with the view taken by the High Court. There is no proper explanation for the inordinate delay of 1778 days in filing the Special Leave Petition. Application for condonation of delay is dismissed. Even on merit, we see no reasons to interfere. Accordingly, the Special Leave Petitions are dismissed."

The caste certificate of petitioner Madhav's sister Nanda

Shankhpale has been adjudicated by the Scrutiny Committee. By an order dated 26-4-1989 the Scrutiny Committee invalidated the caste claim of the petitioner Nanda. Petitioner Nanda then preferred an appeal being Caste Appeal Case No.5 of 1990 before the Additional Commissioner, Tribal Development Nasik against the order of the Scrutiny Committee dated 26-4-1989. The Additional Commissioner, Tribal Development Nasik by his judgment and order dated 12-10-1990 dismissed the appeal. These two judgments and orders are subject matter of Writ Petition No.3443 of 1990. While admitting this writ petition by this Court on 29-11-1990 interim relief in terms of prayer clause (D) was granted under which order the petitioner Nanda was permitted to continue her studies in MBBS Course in the year 1990 - 91 in Government Medical College Nanded.

9) The hearing of these petitions commenced on 7th November 2006 and continued on several dates in the second session and concluded on 23rd February 2007.

. From the docket of Writ Petition No.3443 of 1990 it seems that Writ Petition No.3443 of 1990 was tagged with Writ Petition No.912 of 1988. However, Writ Petition No.912 of 1988 was decided on 5-5-1999 and Writ Petition No.3443 of 1990 was kept pending.

10) On behalf of the petitioners, learned counsel Shri. S.B. Talekar cited several judgments and placed on record the Lok Sabha debates on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1956 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1976. Shri. Talekar, also placed before this Court the Report of the Backward Classes Commission of the year 1955 headed by Shri. Kaka Kalelkar (hereinafter referred to as "the Commission"). In Writ Petition No.2818 of 2004 the petitioner prayed for the following reliefs :

(A) To direct the respondent no.5 to implement the recommendations of the Backward Classes Commission under the Chairmanship of Kaka Kalelkar (1955) so as to include six Tribes including "Koli" in the list of Scheduled Tribes in the State of Maharashtra, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

(B) To hold and declare that the petitioner belongs to "Koli Mahadeo" Scheduled Tribe.

(C) To quash and set aside the order dated 3-3-2004 invalidating the tribe claim of the petitioner passed by the respondent no.2 - Committee."

Though this petition was not treated as public interest

litigation, we have heard the petition on the relief prayed in terms of prayer clause (A) on the vehement insistence of the counsel for the petitioners and on merits of the matter extensively. We propose to refer to the judgments cited, which, according to us, would be relevant for the purpose of deciding the issues raised by the petitioners.

: Submissions :

11) The learned counsel appearing for the petitioners Shri. Talekar submitted that the Division Bench of this Court committed serious error in directing reopening of the caste claim of the petitioner Madhav without issuing any notice to him or without hearing the petitioner which amounts to "judicial impropriety". The Division Bench had no power in law to direct reopening of the issue amounting to conferring powers of review on the Scrutiny Committee which were not existing and conferred on the Scrutiny Committee by any law. In the submission of the counsel for the petitioners, the dismissal of the Special Leave Petitions by the Apex Court would not amount to confirmation of the reasoning adopted by the Division Bench of this Court while disposing of Writ Petition No.912 of 1988. The service record of the father of the

petitioner was wrongly appreciated by the Division Bench while considering the caste claim of Rajesh Shankhpale. It was submitted that the case of Madhav and Nanda deserves to be considered in the light of the material placed on record and the caste validity certificates issued in favour of the near relation of the petitioners.

12) The learned counsel Shri Talekar submitted that the recommendations of the Commission ought to have been accepted in relation to the 'Koli' community in the State of Maharashtra. According to the counsel, the report of the Commission was not implemented fully. The Commission was appointed on 29th January 1953 and the Commission submitted its report on 30th March 1955. The Commission recommended to include "Koli" community in the list of Scheduled Tribes for the entire Hyderabad State which included Marathwada region of the State of Maharashtra. The Parliament passed the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act of 1956 (Act 63 of 1956) on 25th September 1956, which came into force from 31st August 1956. The States Reorganisation Act 1956 was passed on 31st August 1956 and the State of Maharashtra was formed on 1st May 1960. The Marathwada Region merged in the Bombay State on 1st November 1956. The learned counsel submits that before the Parliament could accept the report of the Commission and pass Act of 1956, the

Hyderabad State withered away as part of Marathwada region now in State of Maharashtra was separated from the Hyderabad State. In other words, in the view of the counsel, 'Koli' was recommended as a Scheduled Tribe to be included in the entire Hyderabad State of which Marathwada area was a part. Due to reorganisation of States, area of Marathwada region became part of the State of Maharashtra but for the said area benefit to the people belonging 'Koli' community ought not to have been denied. It is, therefore, necessary to direct, in the submission of the counsel, to the Union of India to include 'Koli' community in the list of Scheduled Tribes in the State of Maharashtra. In effect, the petitioner seeks direction to the Union of India to include six tribes including Koli in the list of Scheduled Tribes in the State of Maharashtra by issuing a writ of mandamus.

13) The learned Assistant Solicitor General Shri. Alok Sharma appearing for the Union of India submitted that the Report of the Commission was relevant in relation to the territory of Hyderabad State but in regard to the State of Maharashtra it could not be made applicable as regards inclusion of "Koli" community in the list of Scheduled Tribes. Inclusion of the castes as per the recommendation of the Backward Classes Commission would be relevant in relation to a State and not to a particular

caste.

14) Learned counsel appearing for the Scrutiny Committee Shri. M.S. Deshmukh submitted that the Backward Classes Commission was appointed on 29th January 1953. The Commission submitted its report to the Central Government on 30th March 1955. The State Reorganisation Act was passed on 31st August 1956 and it came into effect from 1st day of November 1956 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956 was passed on 25th September 1956. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976 (Act No.108 of 1976) in respect of removal of area restriction was passed by the Parliament on 8th September 1976. Learned counsel Shri. Deshmukh submitted that the provisions of Article 342 of the Constitution relate to a State and not to the population of the Scheduled Tribes alone. Provisions of Section 41 of the States Reorganisation Act, 1956 were also referred.

15) The learned Assistant Government Pleader for the State of Maharashtra Shri. Umakant K Patil submitted that raising challenge after 50 years of the submission of the report by the Commission to the Parliament itself is a highly belated exercise on the part of the petitioner. The relief which is claimed is an after thought and is

unreasonable, illogical and not maintainable in the eye of law. In the matter of personal grievance such relief of wider amplitude does not deserve to be considered at all by this Court.

16) On behalf of respondent No.5 affidavit-in-reply is filed by the Deputy Director Tribal Research and Training Institute. The deponent states that it is for the respondent No.5 to accept or reject recommendation of any Commission and such discretion vested in respondent No.5 could not be interfered with by issuance of writ of mandamus. The deponent further states that the Deputy Secretary to Government of Maharashtra requested respondent No.5 for inclusion of Koli with other communities vide letter dated 12th June 1979. However, the recommendations came to be withdrawn by respondent - State of Maharashtra vide letter dated 6th November 1981. The State Government thereafter did not recommend for inclusion of Koli as Scheduled Tribe in the State of Maharashtra. The copies of communications made in this behalf by the State Government with the Union are placed on record. It is stated therein that "Koli" community is described in the Special Backward Class category in the State of Maharashtra. According to the deponent by virtue of the Presidential Order of 1976, Koli in Marathwada region did not become Mahadeo Koli as the main intention

behind the Presidential Order of 1976 was to remove area restriction and not to correct the entry of caste from OBC to Scheduled Tribe. The deponent did not dispute that the erstwhile Hyderabad State withered away before consideration of the recommendation of the Backward Classes Commission by the Parliament.

: Merits of the Tribe Claim :

17) We shall first deal with the merits of the tribe claim of the petitioner Madhav. The Vigilance Cell enquiry was conducted in the case of Madhav. The Vigilance Cell report shows that number of documents collected by the vigilance cell reflected that school admission extract of the petitioner and his relations issued by the Head Master, Zilla Parishad Central Primary School (Girls) Biloli, District Nanded showed caste as Koli. The petitioner also submitted many documents which were referred to by the Committee in its order. We have perused the material placed before us and the original record which we had called. We find oldest school record of the petitioner and his relations showing petitioner's caste as Koli. The other documents and the record

submitted by the petitioner mention the caste as Hindu Koli or Mahadeo Koli. The Vigilance Cell report discloses that substantial record establishes a contra evidence against the claim of the petitioner Madhav. The Committee observed that the petitioner Madhav suppressed the old record of the petitioner's close blood relatives. The petitioner places reliance on some Urdu documents but the same could not be relied upon due to authentic source and appearance of these documents. The Committee further observed that in these documents the caste is mentioned as Koli. The petitioner further placed reliance on the entries in the school record of the maternal cousins namely Laxmi Sambhaji Khanderay and Arjun Sambhaji Khanderay. The petitioner says that Arjun, Laxmi and Tara are his maternal cousins.

18) While dealing with the issue the Division Bench in Writ Petition No.912 of 1988 observed that Amberao and Laxmi are maternal cousin of the petitioner and the record of Laxmi and her sister Tara is conflicting. It was observed that Tara is shown as Koli in her school record and Laxmi is shown as a Mahadeo Koli. While considering the case of Rajesh, the brother of the petitioner Madhav, the Division Bench observed that the extract of admission register issued by the Head Master, Primary Kanya Shala Biloli, showed that caste of Madhav as well as Laxmi and

Tara was entered as Koli (OBC). All these documents did not have probative value for consideration of the caste claim in favour of the petitioner Madhav. It was observed that there was no justifiable reason with the petitioner and his father as to why till 1983 or any time during 1978 to 1983, the father of the petitioner did not seek correction in the service record. It was observed that the facts indicate that it was only when the elder son Madhav sought admission to the medical course that the record was sought to be altered.

19) The Vigilance Cell report dated 30-10-2003 states that repeatedly when the petitioner Madhav was contacted by the concerned officers, he avoided to contact them. Therefore, communications were sent to the Public Works Department on 15-9-2003, 22-9-2003, 30-9-2003, 1-10-2003 and 9-10-2003 which were addressed to the office wherein the petitioner was working. The Vigilance Officer had even approached the Zilla Parishad Primary School Biloli and had verified the school record of the petitioner, his brother and other relations. The record concerning validity certificates issued in favour of Mohan Yadavrao, Rajesh and Santosh were also collected along with statement made by Nanda, sister of the petitioner. Ultimately the Vigilance Officer recorded that the petitioner did not cooperate with the vigilance enquiry in

any manner nor the superiors of the petitioner in the office extended any cooperation to the vigilance cell. From the documents produced by the petitioner and the evidence collected by the Vigilance Officer the petitioner's case has to be considered on its own merits.

20) The record like admission extract of the Zilla Parishad School Biloli would have more probative value.

21) The petitioner placed reliance on the extract of the service book of his father. Entry was taken on the basis of the caste certificate issued in the name of the petitioner's father which was not verified by the Scrutiny Committee.

22) The original service book of Shri Yadav Mahadu Mawalge, father of the petitioner, is produced before us. We have perused the same. The earlier Division Bench also considered the entries in this service book while considering the tribe claim of Rajesh Yadavrao Shankpale in Writ Petition No.912 of 1988. We find that against the caste column entry of "Mahadeo Koli" is encircled and it is written as "Koli Mahadev". Against the column of tribe earlier there was entry as "Other Backward Class" and it is encircled and written as "Scheduled Tribe". There is endorsement made "21/8" by the Chief Officer Municipal

Council to the effect that entry of the caste was taken as per his application and certificate dated 8-1-1983 issued by the Taluka Executive Magistrate Biloli. The caste certificate of the petitioner's father was not verified by any competent Scrutiny Committee or forum. We have perused the entries and from the manner in which the entries are made and their appearance we find that they do not inspire full confidence of the Court to place heavy reliance on them.

23) Some of the documents listed in the order of the Committee like extracts in the school admission register of Laxmi Sambhaji Khanderay, Linguram Ramji, Kamal Piraji, Piraji Amberao and Arjun Sambhaji are from maternal side. The Urdu documents and its translation listed at Sr.No.E-30,31 and E-32, filed by the petitioner are private documents and they are not executed before any Government authorities. The document at Sr.No.E-31 reflected some overwriting and scratches.

24) After going through the original record, the evidence produced by the petitioners and after hearing the submissions of the learned counsel appearing for the parties we do not find that the order passed by the Scrutiny Committee suffers from serious and patent error for causing interference by this Court in exercise of its

writ jurisdiction. Considering the judgment and order delivered by this Court in Writ Petition No.912 of 1988 and the dismissal of the Special Leave Petitions by the Apex Court we are of the considered view that the view adopted by the Scrutiny Committee is reasonable and sound which is in accordance with the available evidence. The petitioners have failed to lead cogent and reliable evidence in support of their caste claim.

25) We must observe that the submissions and the comments made by the learned counsel for the petitioner concerning directions issued by the Division Bench while deciding Writ Petition No.912 of 1988 are not sustainable and those are liable to be disapproved by this Court. It could not be forgotten that Rajesh, brother of petitioner Madhav, filed a petition for review of the judgment of the Division Bench delivered in Writ Petition No.912 of 1988 after about four years and one hundred days. Further, the present petitioner Madhav did not bother to challenge the order passed or the directions issued by the Division Bench but preferred to accept the same and suffered adjudication of his caste claim afresh after remand to the Scrutiny Committee. In this background the submissions advanced on behalf of the petitioner on the direction issued by the Division Bench headed by Hon'ble Shri. Justice S.H. Kapadia (as His Lordship then was) were not

warranted in the facts of the case and untenable in law. We do not find any convincing reason, in view of the evidence or in law, to disagree with the conclusions reached by the Division Bench which disposed of Writ Petition No.912 of 1988. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. We are in agreement with the view adopted by the earlier Division Bench in deciding Writ Petition No.912 of 1988 and directing reconsideration of the caste claim of petitioner Madhav.

: On direction to Central Government :

26) Learned counsel Shri. S.B. Talekar appearing for the petitioners states that the Commission had recommended

that 'Koli' be included in the list of Scheduled Tribes in the entire Hyderabad State. Before the Parliament could pass Scheduled Castes and Scheduled Tribes Order 1956, the Hyderabad State got withered away. Therefore the Marathwada area of the erstwhile Hyderabad State, which now forms part of the State of Maharashtra, should get benefit of Koli being recommended as a Scheduled Tribe by the Commission.

27) The provisions of Article 342 of the Constitution relate to inclusion of a tribe with respect to any State or Union Territory. The Hon'ble the President of India after consultation with the Governor by notification specifies tribe or tribal communities or parts of or groups within tribes or tribal communities for the purpose of the Constitution to be Scheduled Tribes in relation to a particular State or a Union Territory as the case may be.

28) The argument of the learned counsel for the petitioner, in effect, is that even after States Reorganisation by which the State of Andhra Pradesh and State of Maharashtra were formed the benefit of Koli as Scheduled Tribe ought to have been extended to the State of Maharashtra. We do not accept the proposition of the counsel as the same is not the purport of the provisions

of Articles 341 and 342 of the Constitution of India. Perusal of the provisions of Article 342 of the Constitution of India would demonstrates that the Hon'ble the President specifies the tribes as scheduled to be in relation to any State or Union.

29) In the present case the Parliament did not include "Koli" as Scheduled Tribe in the State of Maharashtra. Accordingly, the Presidential Orders of 1956 do not refer "Koli" as a Scheduled Tribe in the State of Maharashtra. Accepting the arguments of the learned counsel for the petitioner would amount to issuance of a writ for inclusion of "Koli" in the list of Scheduled Tribes of the Presidential Order of 1956 in relation to the State of Maharashtra. Such a writ or order would not be permissible in view of the ratio of the judgment of the Apex Court in **State of Maharashtra Vs Milind, (2001) 1 SCC 4.**

30) Learned Assistant Government Pleader, Shri Umakant K Patil appearing for the State rightly submitted that the petitioner has no right to raise such challenge after 50 years seeking writ or directions to the Central Government to implement the recommendations of the Commission about inclusion of "Koli" as Scheduled Tribe in the State of Maharashtra. The learned Assistant Government Pleader

rightly submitted that the present petition is not treated as a public interest litigation for even considering the prayer of the petitioner. Such an exercise, which the petitioner wants this Court to undertake, is an exercise in futility which is not only factually incorrect but legally impermissible. We find strong force in the submission of the learned A.G.P. Shri Umakant Patil in this regard. It is true that the present petition is not treated as a public interest litigation.

Articles 341 and 342 of the Constitution of India.

31) In *Action Committee v. Union of India*, (1994) 5 SCC 244 the Apex Court in para 16 observed thus:

"16. We may add that consideration for specifying a particular caste or 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. "

The Apex Court referred to the answer given by Dr. Babasaheb Ambedkar to a question raised by Mr. Jaipal Singh as under during debates on these issues:--

"... But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them. ..."

The Apex Court referred to the judgment in the case of **Pradeep Jain (Dr) vs. Union of India, (1984) 3 SCC 654** wherein it is held :

"... The interpretation that the Court must put on the relevant constitutional provisions in regard to Scheduled Castes/Scheduled Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that the language of clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. 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."

The Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid. (See - *Palghat Jilla Thandan Samudhaya Samrakshna Samithi v. State of Kerala*, (1994) 1 SCC 359.)

32) In **State of Maharashtra v. Milind**, (2001) 1 SCC 4 the Apex Court in para 15 stated :

"15. ... Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any 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 the 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 Parliament and that too by making a law in that regard. The President had the benefit of consulting the 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 Parliament that is in a better position to know having the 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."

. We may make a useful reference to the latest judgment of the Apex Court in **Prabhat Kumar Sharma vs. Union Public Service Commission**, (2006) 10 SCC 587. In para 16 of the report the Apex Court observed thus:

"16. There is no dispute on the proposition that if the Presidential Notification does not contain any specific class or tribe or a part of, then it is for Parliament to amend the law and the schedule and include in and exclude from the schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State. The courts must read the lists of the Scheduled Castes and Scheduled Tribes under Article 341 and 342 read with Articles 366(24) and (25) as they find them and accept their ordinary meaning. Neither the Government nor the judiciary can add or subtract to the list of Scheduled Castes and Scheduled Tribes. But, the Court would have the limited jurisdiction to the extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the schedule concerned. To that limited extent, the court would have the jurisdiction but, otherwise, the court is devoid of power to include in or exclude from or substitute or declare synonyms to the Scheduled Castes or Scheduled Tribes or parts thereof or group of such castes or tribes."

33) In view of the authoritative pronouncements made by the Apex Court (cited supra) and for the reasons adopted by us we are of the considered opinion that the relief sought for by the petitioner seeking directions to the Central Government is not tenable in law. we reject the petitioner's prayer made in this behalf.

34) Learned counsel for the petitioners Shri. S.B. Talekar in support of his submissions and contentions has placed reliance on the following judgments.

(1) **State of Maharashtra vs. Abhay, 1984 (Supp) SCC 701.** In this case the Apex Court observed that where admission is granted on a provisional certificate which is liable to be varied or cancelled at a later stage causing irreparable harm and deep frustration to the candidate who secured coveted admission on a provisional certificate but the spectre of expulsion haunts him, the State of Maharashtra was advised to devise and frame a more rational method for obtaining much in advance a certificate on the strength of which a reserved seat is claimed.

(2) **Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217.** In this case a Special Bench of nine Hon'ble

Judges of the Apex Court has considered the legal position relating to affirmative actions and reservations for backward classes of citizens in the services of the State and issued directions to the Central and the States in that regard.

(3) **M.V. Venkataramana Bhat v. Returning Officer, (1993) 4 SCC 317.** In this case, the Apex Court held that when there is abuse of judicial process remedy is provided under Article 226 and the High Court should grant appropriate reliefs.

(4) **Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development, (1994) 6 SCC 241.** In this case the procedure for issuance of and scrutiny and approval of the social status certificates is laid down by the Apex Court.

(5) **R. Kandasamy v. Chief Engineer, Madras Port Trust, (1997) 7 SCC 505.** In this case, a community certificate to a scheduled tribe candidate was issued by the Tahsildar which was a good and valid community certificate for all purposes so long such a certificate is not cancelled. The Supreme Court held that the authorities cannot decline to take that into consideration and insist upon a fresh Community Certificate from the Revenue Divisional Officer.

(6) All India Judges' Association vs. Union of India, (2002) 4 SCC 247.

(7) Narendra K Kochar Vs. Sind Maharashtra Coop. Housing Society, (2002) 6 SCC 66.

(8) S. Shanmugavel Nadar v. State of T.N., (2002) 8 SCC 361. For declaration of law under Article 141 of the Constitution of India, there should be speech i.e. a speaking order.

(9) Union of India v. Jaipal Singh, (2004) 1 SCC 121. In this case it is held that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by the Apex Court or constitute a binding precedent.

(10) Enforcement and Implementation of Dowry Prohibition Act, 1961, in re, (2005) 4 SCC 565. In this case a writ petition was filed before the Apex Court seeking inter alia a writ of mandamus directing the Central Government to frame rules under Section 9 Dowry Prohibition Act, 1961 and the State Governments to frame rules under Section 10 of the Act and for providing for

additional functions to be performed by the officers concerned under section 8-B of the Act etc. The Apex Court directed the Union of India and the States to take more effective steps to implement the provisions of the Dowry Prohibition Act 1961.

(11) **Thiagarajan v. Sri Venugopalaswamy B Koil, (2004) 5 SCC 762.** The provisions of Articles 25 to 30 of the Constitution of India and the expression "minority" used in Articles 25 to 30 were considered by the Apex Court in this case.

(12) **Municipal Council, Sujapur v. Surinder Kumar, (2006) 5 SCC 173.** In para 11 the Apex Court observed that the High Court's jurisdiction to issue a writ of certiorari though is limited, a writ of certiorari can be issued if there is an error of law apparent on the face of the record.

(13) **Union of India v. R.C. Jain, AIR 1981 SC 951.** It is held that the definition of an expression in one Act must not be imported into another.

(14) **The Comptroller & Auditor General vs. K.S. Jagannathan, AIR 1987 SC 537.** In this case in order to do complete justice to all concerned as required by Article

142 of the Constitution the Apex Court issued directions for relaxation of marks for qualifying examination to the Scheduled Caste and Scheduled Tribe candidates.

(15) **Sita Ram v. Chhota Bhondey, AIR 1991 SC 249.** The Supreme Court held that jurisdiction of Civil Court to adjudicate upon the question as to title in respect of land covered by notification under S.4(2) of the U.P. Consolidation of Holdings Act is barred.

(16) **Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri, AIR 1995 SC 1506.** In this case the Apex Court laid down the procedure for issuance of social status certificates, their scrutiny and approval.

(17) **Ramesh v. State of Maharashtra, 1996 (1) Mh.L.J. 175.** The State Government appointed Scrutiny Committee for verification of caste certificates of persons belonging to Scheduled Tribes by a resolution dated 23-1-1985. By Resolution dated 8-3-1985 the State Government appointed appellate authorities to consider the decision of the Scrutiny Committee. However, by Resolution dated 17-7-1993, the Government revoked the Resolution dated 8-3-1985 and made the decision of the Scrutiny Committee final by revoking the right of appeal. A Division Bench of this Court directed to constitute the

appellate authority for hearing appeals against orders of the Scrutiny Committee till the directions of the Supreme Court contained in Madhuri Patil's case are complied with.

(18) **Kamalabai v. State of Maharashtra, 1977 Mh.L.J. 450.** This is a case wherein an issue under section 3(3)(ii) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act 1961 and under section 8 of the Hindu Succession Act 1956 was considered by a learned Single Judge of this Court.

(19) **Devidas Baburao Hajare v. State of Maharashtra, 1987 Mh.L.J. 801.** In this case petitioner got her caste changed from Lohar to Gadi Lohar in the school leaving certificate and obtained a certificate to that effect from Executive Magistrate. Petitioner sought admission to the first mbbs course. in the meanwhile the caste Verification Committee invalidated the caste claim. Appeal against the same was also dismissed. This Court dismissed the writ petition against those orders.

(20) **Laxmi R. Karhadkar v. Resident Deputy District Collector, 203 (2) Mh.L.J. 14.** In this case the Resident Deputy Collector Mumbai City by a order dated 7-10-2002 informed the President of the Regional Caste Scrutiny

Committee Konkan Division Navi Mumbai to cancel the caste certificate obtained by the petitioner by submitting false documents in support of her claim. This Court held that the order dated 7-10-2002 will not be treated as order cancelling the certificate. However, the Scrutiny Committee was directed to consider the validity of the certificate in the light of the allegation and take decision after hearing all the parties.

(21) **Amol Narayan Wakkar v. State of Maharashtra, 2005 (1) Mh.L.J. 798.** A Division Bench of this Court held that the tribe "Thakar" throughout the State has to be treated as Scheduled Tribe. It is further observed that the Scheduled Tribe Order has to be read as it is and applied accordingly without any tinkering whatsoever.

(22) **Rambhau Diwakar Parkhedkar v. State of Maharashtra, 2003 (4) Bom.C.R. 264.** The Tribe claim of the petitioner to be belonging to Halba was negatived by the Committee on ground that school records mention caste as Kosti. However the Scrutiny Committee failed to follow procedure in making vigilance enquiry as per para 5 of the judgment in Madhuri Patil's case and hence the matter was remanded to the Committee for fresh decision.

(23) **Siddha Raj Dhadda v. State of Rajasthan, AIR 1990**

Rajasthan 34. In a matter of public importance, Court can appoint commission.

(24) **K.S. Vijayalakshmi v. Tahsildar, Palakkad, AIR 200 Kerala 262.** A Division Bench of Kerala High Court held that entry as to caste in school register prior to enactment of Constitution is of great importance.

(25) **Dattatraya Ramrao Thorat v. State of Maharashtra, 2003 (5) Mh.L.J. 539.** Scope for interfering with the decision of the Scrutiny Committee invalidating the caste claim. Unless the Court records a finding that the evidence which has more probative value has not been considered by the Scrutiny Committee or the Committee has committed gross error in appreciating evidence or has acted in flagrant violation of principles of law or justice causing grave injustice to the petitioner or the findings of the Committee are so perverse and unreasonable that no reasonable person could possibly come to such a conclusion which the Committee has come to, the decision of the Committee cannot be interfered with. Evidence from the paternal side has more evidenciary value than the evidence from maternal side, wife's side or relations other than from the paternal side.

(26) **M.S. Ahlawat v. State of Haryana, (2000) 1 SCC**

278. Under Article 142 of the Constitution of India the Supreme Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute.

(27) **Gayatrilaxmi Bapurao Nagpure vs. The State of Maharashtra, 1996 (3) Bom. C.R. 687.** Petitioner was denied caste certificate as Halbe a scheduled tribe even when her first cousin had been issued a certificate by Government overruling objection of Scrutiny Committee. Considering the documents in evidence and the certificate issued to her cousin decision of the Committee and its confirmation by High Court is not correct.

On 'Per incuriam'

(1) In **A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602** it is held that "Per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account, to be demonstrably wrong. If a decision has been given 'per incuriam' the court can ignore it. It is further held that, the

circumstance that a decision is reached per incuriam, merely serves to denude the decisions of its precedent-value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it.

(2) **Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230** wherein it is held that a party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him.

(3) **State of Maharashtra vs. Jalgaon Municipal Council, (2003) 9 SCC 731.** The Apex Court held that it is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test it is liable to be struck down by the courts in exercise of their judicial review jurisdiction.

35) The arguments advanced by the learned counsel for the petitioners is that this Court in the facts of the case shall direct respondent No.5 to implement recommendations of the Backward Class Commission to include six tribes including Koli in the list of scheduled tribes in the State of Maharashtra based on the analogy that the Marathwada area of the State of Maharashtra was part of the erstwhile Hyderabad State. From the scheme of the provisions of Articles 341 and 342 of the Constitution of India and in view of the pronouncements of the Apex Court as cited supra made in this regard we are of the opinion that issuing directions to respondent No.5 as prayed for by the petitioner herein would amount to tinkering with the Presidential Order. It could not be presumed that the Parliament was unaware of the fact that the Hyderabad State got withered away due to reorganisation of States undertaken under the provisions of the State Reorganisation Act which came into force on 31st August 1956. The State of Andhra Pradesh was formed on 1st November 1956. The Backward Classes Commission report was submitted on 30th March 1955. The State of Andhra Pradesh was formed by virtue of the provisions of Section 3 of the States Reorganisation Act 1956 and the erstwhile State of Hyderabad ceased to exist after publication of notification. Likewise a new State was

formed from the Bombay State to State of Maharashtra which included Aurangabad, Parbhani, Bhir and Osmanabad districts, Ahmedpur, Nilanga and Udgir talukas of Bidar district, Nanded district (except Bichkond and Jukkal circles of Deglur taluk and Mudhol, Bhainsa and Kuber circles of Mudhol taluk) and Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk of Adilabad district which was part of erstwhile State of Hyderabad.

36) The provisions of Section 41 of the States Reorganisation Act 1956 read thus:

"41. Modification of the Scheduled Castes and Scheduled Tribes Orders.-- As soon as may be after the commencement of this Act, the President shall by order make such modifications in the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Part C States) Order, 1951, the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Part C States) Order, 1951, as he thinks fit having regard to the territorial changes and formation of new States under the provisions of Part II."

37) After coming into force the State Reorganisation Act 1956 Koli was not included as scheduled tribe in the State of Maharashtra by an Act of Parliament or a Presidential Order. The petitioner's contention, therefore, does not commend to us that in the light of the

formation of new States directions are required to be issued to the Central Government after near about 50 years to take effective steps to include "Koli" in the list of Scheduled Tribes in the State of Maharashtra. We reject the petitioner's submissions and contentions raised in this regard.

38) Learned Assistant Government Pleader Shri. Umakant Patil has placed on record a communication dated 12th June 1979 made by the Deputy Secretary to State Government, to the Chief Legislative Committee Officer, Lok Sabha Secretariat, Parliament House New Delhi. It is contended in the said communication that a copy of the representation received from the Secretary, Akhil Koli Samaj, Bombay was enclosed. At present the communities (i) Koli Malhar, (ii) Koli Mahadeo, Dongar Koli, (iii) Tokre Koli, Koli Dhor, Kolcha and Kolgha are included in the list of Scheduled Tribes. It is stated that it was represented that these are the sub-tribes of main community Koli and hence the Koli community along with its other synonyms viz. Son Koli, Suryavanshi Koli, Mangela, Macchimar Koli etc. also deserved inclusion in the list of scheduled tribes. It is further stated that the State Government had already recommended inclusion of Koli community in the list of Scheduled Tribes along with Dhewar, Dheemar etc. The community Koli along with its 16

sub-tribes mentioned in the representation were required to be included in the list of scheduled tribes separately.

39) The Secretary to Government, Social Welfare & Sports Department Mantralaya in a confidential communication dated 6th November 1981 addressed to the Joint Secretary to Government of India, Ministry of Home Affairs New Delhi under the subject: "Comprehensive revision of the lists of S.Cs. and S.Ts.", records in para 4 :

"4. The State Government has reviewed its recommendation regarding revision of lists of S.Cs. and S.Ts. forwarded to the Chief Legislative Committee Officer, Lok Sabha Secretariat New Delhi vide confidential Government Letter, social Welfare and Cultural Affairs, Sports and Tourism Department No. CBC-1078/43418/D-V dated 12-6-1979 (copy enclosed) in connection with the The S./Cs. & S.Ts. Orders (Amendment) Bill 1978 and has now come to the decision that the recommendation in paragraphs 2 to 5 thereof do not need any consideration and hence they should be dropped. However, the recommendation in paragraph 1 thereof regarding insertion of a comma in between the words 'Gond' and 'Rajgond' at entry No.18 of the present list of S.Ts., for Maharashtra, needs consideration and it is recommended."

40) The State has placed on record a Government Resolution dated 7th December 1994 by which the State Government has included Koli and its synonyms in the list

of Special Backward Classes. The correspondence made between the State Government and the Central Government demonstrates that the State Government had no intention to consider and recommend "Koli" as a Schedule Tribe in the State of Maharashtra.

41) The learned counsel for the petitioner has placed on record the Lok Sabha debates which took place prior to passing of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. We have perused the relevant extracts of the debates.

42) Learned counsel for the petitioners has placed before us the Report of the Commission which was appointed by the Hon'ble the President in exercise of powers conferred under Article 340 of the Constitution of India. The Commission recommended for inclusion of "Koli" as Scheduled Tribe in the Hyderabad State. We have perused the recommendations of the Commission in this regard.

On Review of the order of the Scrutiny Committee.

43) The learned counsel appearing for the petitioner submitted that the Division Bench while deciding Writ Petition No.912 of 1988 (Rajesh vs. State of Maharashtra)

committed grave error in reopening the issue of verification of caste claim of the petitioner Madhav which had already concluded by virtue of an order passed by the Scrutiny Committee. According to the learned counsel it was improper and unnecessary for the Division Bench to have directed the Scrutiny Committee to reconsider the judgment of the Divisional Commissioner Aurangabad dated 30th March 1988. In absence of power of review conferred on the Scrutiny Committee under the statutory provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act 2001 the Division Bench had no jurisdiction to direct the Scrutiny Committee to reconsider the decision of granting validity certificate in favour of the petitioner. It is submitted that unless power of review is specifically conferred by law or statute the same would not be exercised by any Court or Tribunal. In the submission of the learned counsel, to that extent the judgment and order delivered by the Division Bench in Writ Petition No.912 of 1988 was per incuriam.

44) The learned counsel appearing for the Scrutiny Committee Shri. M.S. Deshmukh placed reliance on the judgment of a Division Bench of this Court in *Writ*

Petition No.447 of 2003 (Smt Sangita Sharad Kolse Vs. The State of Maharashtra and others) wherein an issue was raised as to whether Scrutiny Committee could entertain complaint and start suo motu proceedings for reviewing its earlier order. Following specific question was raised in para 7 of the judgment:

(a) Whether the statute has conferred express powers of review and whether in the absence of express powers of review impliedly it can be said that the respondent Scrutiny Committee can exercise the powers of review.

The Division Bench arrived at the following conclusion :

"Since the candidate had obtained an order validating her caste by suppressing the material information of her conversion to Christianity and the said order validating her caste claim had been obtained by practising fraud on the respondent Scrutiny Committee, according to us the respondent Scrutiny Committee was clothed with the inherent jurisdiction of exercise of powers of review."

45) Learned counsel for the Union of India, the learned Assistant Government Pleader for the State of Maharashtra and the learned counsel appearing for the Scrutiny Committee have relied on the following judgments in support of their respective contentions:

(1) **Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College**, (1990) 3 SCC 130. In this case the Apex

Court has considered the expressions 'for the purpose of this Constitution' and 'in relation to that State' appearing in Articles 341 and 342 of the Constitution of India.

(2) **Palghat Jilla Thandan Samudhaya Samrakshna Samithi v. State of Kerala, (1994) 1 SCC 359.** In this case the Apex Court held that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid. It is not for the State Government or for the Supreme Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilise the report to, in effect, modify the Scheduled Castes Order.

(3) **Action Committee v. Union of India, (1994) 5 SCC 244.** The Apex Court in this case considered the words "For the purposes of this Constitution in relation to that State" appearing in Articles 341 and 342 of the Constitution and held that a person belonging to SC/ST in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to

any other State on his migration to that State for the purpose of employment, education etc.

(4) **State of Maharashtra v. Milind, (2001) 1 SCC 4.**

In this case the Apex Court held that Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342.

(5) **Kishorilal v. Raja Ram, AIR 1972 SC 598.** This

was a case wherein the provisions of Section 5 (a) of the Representation of the People Act 1951 were under consideration of the Apex Court. The Court observed that condition precedent for contesting election to a constituency reserved for scheduled caste is that the caste of the candidate must have been recognised as a scheduled caste in a constituency in which his name is entered in electoral roll. The fact that his caste is recognised as scheduled caste in the constituency in which he is contesting election is of no avail.

(6) **Srish Kumar Choudhury v. State of Tripura, AIR**

1990 SC 991. It is held that the entries in the Presidential Order have to be taken as final and the scope

of enquiry and admissibility of evidence is confined to showing what an entry in the Presidential Order is intended to mean. It is not open to the Court to make any addition or subtraction from the Presidential Order.

(7) **Shamrao Tukaram Naik v. Devchand College, Arjunnagar, 2003 (2) Mh.L.J. 649.** In this case it is held by a Division Bench of this Court that no protection and benefit of reservation in the State of Migration can be extended to them even if same is recognized as Vimukta Jati in Maharashtra.

(8) **Bal Patil v. Union of India, (2005) 6 SCC 690.** Provisions of Articles 25 to 30 of the Constitution of India and the expression "Minority" used in Articles 25 to 30 were considered by the Apex Court in this case.

46) We find that, Rajesh, brother of petitioners Madhav and Nanda, had filed Review Petition No.19365 of 2003 in Writ Petition No.912 of 1988 which came to be rejected. And while rejecting the review petition a statement made by learned counsel for the Scrutiny Committee Shri. Deshmukh was recorded to the effect that the caste claim of the brother of Rajesh was already invalidated. Special Leave Petitions against the order of rejection of the review petition and the judgment and

order delivered by Division Bench (Coram: S.H. Kapadia and B.H. Marlapalle, JJ) in writ Petition No.912 of 1988 were filed. The Apex Court by an order dated 9-8-2005 dismissed the special leave petitions stating therein that the Court is in agreement with the view taken by the High Court. Even on merits it was stated that there was no reason to interfere in the special leave petitions. The order passed by the Apex Court is explicitly clear that the reasoning adopted in the judgment and order delivered by the Division Bench of this Court in Writ Petition No.912 of 1988 was confirmed by the Apex Court including the directions issued to the Scrutiny Committee to reconsider the judgment of the Divisional Commissioner Aurangabad in the case of present petitioner.

47) The learned counsel for the petitioner in support of his contention submits that the dismissal of the special leave petitions would not amount to confirmation of the reasoning adopted by the Division Bench. Reliance is placed on a reported judgment of the Apex Court in **S. Shanmugavel Nadar v. State of T.N., (2002) 8 SCC 361**. In para 13 it is stated that when no reasons are given, a dismissal simpliciter is not a declaration of law by the Supreme Court under Article 141 of the Constitution. In para 14 it is stated that it is the speech, express or necessarily implied, which only is the declaration of law

by this court within the meaning of Article 141 of the Constitution. We are not convinced with the submissions advanced by the learned counsel for the petitioner that the reasoning and finding reached by the Division Bench of this Court headed by Hon'ble Shri. Justice S.H. Kapadia in Writ Petition No.912 of 1988 was not confirmed by the Apex Court while dismissing the Special Leave Petitions. In the light of the facts of the case and the orders passed by this Court and the Apex Court we have no doubt in our mind that the contentions raised on behalf of the petitioner in this behalf deserve to be rejected.

Writ Petition No.3443 Of 1990

48) We have gone through the case papers of Nanda Shankpale. At the outset we do not find that the case of Nanda deserves consideration by this Court. For the reasons reflected in the judgment and order of the Division Bench in Writ Petition No.912 of 1988 and from the material placed before the Scrutiny Committee we are of the view that the Scrutiny Committee rightly rejected the tribe claim of petitioner Nanda. While considering the affinity test the Committee rightly referred to the case of the brother of Nanda namely Rajesh wherein it was stated that Shri Bhai Bandarkar was the leader of Macchimar Koli organization and it was well known fact

that Shri. Bhai Bandarkar was the leader of Macchimar Koli organisation. In the interview sheet Rajesh had stated before the Committee that Koli is the main tribe while Suryawanshi is the sub caste of Koli tribe. The service record of the father of the petitioner was also referred to by the Scrutiny Committee along with the school record of the brother of the petitioner namely Madhav.

49) Affidavit-in-reply is filed in Writ Petition No.3443 of 1990 on behalf of respondent No.2, by a Research Officer in the office of the Scheduled Tribe Certificate Scrutiny Committee Aurangabad. In para 4 of the reply the deponent states that Yadavrao Shankpale entered in the service on 1st September 1966 and he was shown as belonging to Other Backward Class. In the caste column 'Koli' was initially appearing. In the year 1983 Yadavrao, father of the petitioner Madhav and Nanda, got corrected his entry as Koli Mahadeo. As regards the judgment delivered in Writ Petition No. 753 of 1984 in the case of Shankar Amberao the deponent states Shankar was cousin of the petitioner Nanda from maternal side and the judgment of the Maharashtra Revenue Tribunal could not be treated as conclusive proof to decide one's social status.

50) A questionnaire was supplied to the petitioner Nanda which was duly filled in by her. The Scrutiny Committee recorded a statement of the petitioner and her brother relating to the caste claim of the petitioner. From the same it was observed by the Committee that the information supplied by the petitioner does not coincide with that of the tribe claim made by her. It was noticed that the important festival like Wagh Baras, Sat, Kar and Panji prevalent in Mahadeo Koli were unknown to the petitioner. We find that even on affinity test the petitioner Nanda had failed to satisfy the requirements in establishing her tribe claim. We do not find any error with the appellate authority i.e. the Additional Commissioner Tribal Development Nasik in dismissing the appeal of the petitioner filed against the order of the Scrutiny Committee dated 24-4-1989 as it was found in the school record of the primary school that the caste of the petitioner mentioned as ' **Koli**' and not 'Mahadeo Koli'. We do not find any justifiable reason for setting aside the impugned orders which are sought to be challenged in Writ Petition No.3443 of 1990. The writ petition deserves dismissal.

Writ Petition No.2641 of 1992

51) The petitioner Madhav challenged the order of the Scrutiny Committee dated 19-9-1992 invalidating his tribe claim as "Mahadeo Koli", Scheduled Tribe. The tribe claim of the petitioner was referred to the Scrutiny Committee by the Public Works Department Mantralaya Bombay as the petitioner had applied for recruitment to Government service against a seat reserved for Scheduled Tribe claiming himself to be belonging to Mahadeo Koli. The Scrutiny Committee had examined the case of Madhav independently and by an order dated 19-9-1992 invalidated the tribe claim of the petitioner. On the affinity test also the Committee was not satisfied. For the reasons stated above, while considering case of the petitioner Madhav in Writ Petition No.2818 of 2004, Writ Petition No.2641 of 1992 also deserves dismissal.

52) For the reasons stated above, the writ petitions stand dismissed. Rule discharged. No order as to costs.

(R.M. BORDE, J.)

(NARESH H PATIL, J.)

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