

GAHC010252392022



2024:GAU-AS:10191

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8024/2022

DIVYANA A LAHAN AND ANR.
(MINOR) REP. BY HER MOTHER/NEXT FRIEND/LEGAL GUARDIAN SMT.
LEENA DOLEY, PERMANENT R/O- H.NO. 54, BELTOLA COLLEGE ROAD,
BANGAON, BELTOLA, GHY-28, KAMRUP (M), ASSAM, PRESENTLY
RESIDING AT ASSAM VALLEY SCHOOL, BALIPARA, SONITPUR/NAGAON

2: LEENA DOLEY
PERMANENT R/O- H.NO. 54
BELTOLA COLLEGE ROAD
BANGAON
BELTOLA
GHY-28
KAMRUP (M)
ASSAM
PRESENTLY RESIDING AT NAGAO

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM DISPUR, GHY-
06, ASSAM

2:THE SECRETARY

DEPARTMENT OF TRIBAL AFFAIRS (PLAIN)
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006
ASSAM.

3:STATE LEVEL CASTE SCRUTINY COMMITTEE
ASSAM
REP. BY ITS CHAIRMAN
OFFICE OF THE SECRETARY

DEPARTMENT OF TRIBAL AFFAIRS (PLAIN)
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006
ASSAM.

4:THE DY. COMMISSIONER
KAMRUP (M) DISTRICT
GHY-01

5:ADDL. DY. COMMISSIONER
KAMRUP (M) DISTRICT
GHY-01

6:VIGILANCE CELL
DIRECTORATE OF WPT AND BC DEPTT.
GOVT. OF ASSAM
RUKMINI GAON
GHY
PIN- 781006
REP. BY THE SUPERINTENDENT OF POLICE
CID
ASSAM

7:SUPERINTENDENT OF POLICE
CID
ASSAM
ULUBARI
GHY-07

8:GAURAV UPADHYAY
IPS
S/O- SHYAM SUNDAR UPADHYAYA R/O- SILPUKHURI
GHY-0

Advocate for the petitioners : Ms. G. Goswami, Advocate

Advocate for the respondents : Mr. R. Dhar, SC, Deptt. of Tribal Affairs
: Mr. K. N. Choudhury, Sr. Advocate
: Mr. K. P. Pathak, Advocate

Date of Hearing : 13.08.2024, 19.09.2024
Date of Judgment : 03.10.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Heard Ms. G. Goswami, the learned counsel appearing on behalf of the petitioners. Also heard Mr. R. Dhar, the learned counsel appearing on behalf of the respondent No.1 to 7 as well as Mr. K. N. Choudhury, the learned senior counsel assisted by Mr. K. P. Pathak, the learned counsel appearing on behalf of the respondent No.8.

2. The instant writ petition has been filed by the petitioners challenging the order bearing No.KAV TAD/BC/790/2020/213 dated 29.09.2021 of the State Level Caste Scrutiny Committee, Assam (for short, referred to as "the impugned order") whereby the State Level Scrutiny Committee (for short "the SLSC") held that the petitioner No.1 does not belong to the Scheduled Tribe community of Assam. For deciding the legality and validity of the impugned order, this Court finds it relevant to briefly state the facts leading to the instant writ petition.
3. The Petitioner No.2 is the mother of the petitioner No.1 and admittedly belongs to the Miri Tribe which is a recognized Scheduled Tribe (Plains) under the Constitution (Scheduled Tribes) Order, 1950 (for short "Order of 1950"). The petitioner No.2 was married to one Neelutppal Lahan (since deceased). Out of the said wedlock, the petitioner No.1 was born on 10.01.2006. The petitioner No.2 along with Late Neelutppal Lahan had another child, namely, Leander Ayang Lahan who was born on 27.09.2010. Unfortunately, Neelutppal Lahan expired on 04.10.2012. At that relevant point of time, the petitioner No.1 was 6 years old and her brother was just

2 years old. The petitioner No.2 thereafter raised both the children. The names of the two children were changed in the year 2015 in as much as the petitioner No.1 earlier was known as Miss Divyana Aappun Lahon and presently is known as Miss Divyan A. Lahon and her brother was known as Master Leander Aayang Lahon and presently is known as Master Aayang L. Lahan.

4. On 04.08.2020, the petitioner No.2 applied to the Deputy Commissioner, Kamrup (Metro) for issuance of caste certificate in the name of her two children, i.e. the petitioner No.1 and her brother along with all necessary documents. The Office of the Deputy Commissioner, Kamrup (Metro) issued the Caste Certificates in the name of both the children of the petitioner No.2 on 21.08.2020 bearing Caste Certificate Nos. 758/566 and 757/566.
5. At this stage, this Court finds it very relevant to take note of an important development which took place on 31.12.2019. On 03.01.2020, an FIR was lodged before the All Women Police Station at Guwahati wherein it was alleged that on 31.12.2019, the respondent No.8 herein had sexually molested the petitioner No.1 at his residence as well as in the hotel room wherein the petitioner No.2 along with her children were staying. On the basis of the said FIR being filed, a case was registered against the respondent No.8 being All Women P.S. Case No.5/2020 initially under Section 354 of the Indian Penal Code (IPC) read with Section 10 of the Protection of Children from Sexual Offence Act, 2012 (POCSO). Subsequently, a prayer was made by the Investigating Officer before the learned Court of the Sub-Divisional Judicial Magistrate No.1, Kamrup (Metro) at Guwahati whereupon an order was passed on 07.01.2020

thereby allowing addition of Section 354(A) of the Indian Penal Code and Section 3(1) (xi) (W) (i) (ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989').

6. The respondent No.8 thereupon challenged the Caste Certificate issued to the children of the petitioner No.2 by issuance of a legal notice to the Deputy Commissioner, Kamrup (Metro). The legal notice was issued on 24.08.2020. It seems that this development had triggered the dispute involved in the present proceedings. Thereupon, vide an order dated 22.09.2020, the Caste Certificates so issued to the petitioner No.1 and her brother were cancelled by the Deputy Commissioner, Kamrup (Metro) vide an order dated 22.09.2020.
7. The aforesaid cancellation order dated 22.09.2020 was put to challenge by filing a writ petition before this Court by the petitioners along with the son of the petitioner No.2 which was registered and numbered as WP(C) No.4204/2020. It is pertinent herein to note that the Deputy Commissioner, Kamrup (Metro) pursuant to issuance of notice in WP(C) No.4204/2020 cancelled its order dated 22.09.2020 vide an order dated 12.10.2020 and the matter was forwarded to the SLSC, Assam for doing the needful. In that view of the matter, the writ petition which was filed being WP(C) No.4204/2020 became infructuous and the same was accordingly closed vide an order dated 15.10.2020.
8. The Respondent No.8 filed a writ petition thereafter seeking protection of this Court on the ground that as the status of the respondent Nos.6, 7 & 8 in that proceedings were still under cloud and therefore the provisions of the Act of 1989 should not be applied in the criminal proceedings against the respondent No.8 in connection with All Woman Police Station Case

No.5/2020. This writ petition was registered and numbered as WP(C) No.4523/2020. This Court vide an order dated 21.10.2020 directed that until such time the question of validity of the ST certificates are decided by the Competent Committee, the provisions of the said Act of 1989 shall not be applied in All Women Police Station Case No.5/2020.

9. The order dated 21.10.2020 was put to challenge by the petitioners herein in WA No.190/2020. The said Writ Appeal was disposed of vide an order dated 21.01.2021 without interfering with the order passed by the learned Coordinate Bench on 21.10.2020. However, certain directions were issued vide the order dated 21.01.2021. The said directions were:-

- (i) The Screening Committee which was seized with the matter as regards the validity of the Caste Certificate was directed to decide its validity positively within a period of 15 days from the date a certified copy of the order dated 21.01.2021 was placed before the Screening Committee.
- (ii) The order passed by the learned Coordinate Bench on 21.10.2020 would in no way come in the ongoing investigation that shall be followed and the investigation shall continue.

It was further made clear vide the order dated 21.01.2021 by the learned Division Bench that whether the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are attracted or not would ultimately depend upon the orders to be passed by the Screening Committee.

10. At this stage, it is apposite to observe that the records of the SLSC were directed to be produced by this Court. What steps were taken by the SLSC

pursuant to the order dated 21.01.2021 is very pertinent to be mentioned as the same have a bearing on the outcome of the instant proceedings. From the said records, it is seen that on 01.02.2021, the petitioner No.2 submitted the order dated 21.01.2021 passed in WA No.190/2020 to the Deputy Secretary to the Government of Assam, WPT & BC Department. The file noting dated 02.02.2021 shows that the Department had sought for a report from the Vigilance Committee, but the same was not received. It is further seen from the file noting dated 16.03.2021 that the report of the Superintendent of Police, CID, Assam was submitted by the Director, WPT & BC Department of the Government of Assam. Thereupon, the SLSC was convened on 27.04.2021 as would appear from the File Noting dated 26.04.2021 and the Petitioner No.2 was directed to be informed. The petitioner No.2 on coming to learn about the same, issued a letter requesting the SLSC not to call the petitioner No.1 as well as the respondent No.8 on the same day keeping in mind that the petitioner No.1 was a minor and a victim of sexual assault by the respondent No.8. On the same date, the petitioner No.2 had also submitted her written statement. Thereupon, another date was fixed for the respondent No.8 for his hearing. It further transpires from the records that on 25.06.2021, the Respondent No.8 was heard. On that very day, the Respondent No.8 submitted a Supplementary Objection dated 25.06.2021. Subsequent thereto, the Respondent No.8 submitted another objection on 28.06.2021. The File Noting are absolutely silent as to whether the supplementary Objection as well as the objection filed on 25.06.2021 and 28.06.2021 by the Respondent No 8 were furnished to either of the Petitioners. In fact, the File Noting dated 08.07.2021 shows that the Respondent No.8 was

heard and written statements were taken on record and a draft Speaking Order was put up on 08.07.2021. Subsequent thereto, the draft Speaking Order was made and the Speaking order was signed on 29.09.2021.

11. In the backdrop of the above, let this Court therefore take note of the respective submissions of the learned counsels for the parties. Ms. G. Goswami, the learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 29.09.2021 is required to be interfered with primarily for two reasons. First, the impugned order suffers from violation of the principles of natural justice as well as also the directions so passed by the Supreme Court in the case of ***Kumari Madhuri Patil & Another vs. Additional Commissioner, Tribal Development & Others***, reported in ***(1994) 6 SCC 241***. Elaborating her first submission, the learned counsel drew the attention of this Court to the impugned order and submitted that the State Level Scrutiny Committee has taken note of the following documents to arrive at its opinion:-

- (i) Enquiry report dated 05.09.2020 by the Additional Deputy Commissioner, Kamrup (M).
- (ii) Legal opinion of the Advocate General, Assam 19.09.2018.
- (iii) Vigilance Report of the Vigilance Cell of the Directorate of WPT & BC Department.
- (iv) Representation dated 04.09.2020 of the respondent No.8.

The learned counsel for the petitioners submitted that none of these documents which were made the basis of the impugned order was provided to the petitioners. She submitted that the petitioner No.2 was

informed that on 27.04.2021, the meeting of the SLSC was conveyed and on that date, she was asked to submit her written statement. Thereafter, inspite of the order passed by the Division Bench of this Court dated 21.01.2021 to conclude the enquiry proceedings within 15 days, almost 8 months thereafter, the impugned order was passed. She further referred to the directions passed by the Supreme Court in the case of ***Kumari Madhuri Patil*** (supra), and more particularly to Paragraph 13(6) which mandated that if the report of the Vigilance Officer mentioned that the claim for social status to be not genuine or doubtful or spurious or false or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the Vigilance Officer to the candidate by registered post with acknowledgement due or through the Head of the Educational Institution concerned in which the candidate was studying or employed. In the instant case, the Vigilance Report was neither served upon the petitioners nor was any show cause notice issued informing about the contents of the Vigilance Report. The learned counsel for the petitioners further submitted that the above action was also in violation to the Office Memorandum dated 11.05.2018 issued by the WPT & BC Department of the Government of Assam, and more particularly to Clauses 3 & 4. The learned counsel for the petitioners therefore submitted that on this count alone, the impugned order dated 29.09.2021 is liable to be set aside and quashed.

12. The second ground for interference as per the learned counsel for the petitioners is the yardstick applied is not in consonance with the judgment of the Supreme Court in the case of ***Rameshbhai Dhabai Naika vs State of Gujarat and Others***, reported in ***(2012) 3 SCC 400***. The

learned counsel for the petitioners submitted that the impugned order suffers from complete non-application of mind for not applying the parameters lay down by the Supreme Court in the in the case of ***Rameshbhai Dhabai Naika*** (supra) in the manner provided under law and as such, on that basis also the impugned order is required to be set aside and quashed. The learned counsel for the petitioners elaborating her submission submitted that there is no doubt that the petitioner No.2 belongs to the Miri community which is a Scheduled Tribe (Plains) within the meaning of the Order of 1950. The fact, that the husband of the petitioner No.2 expired in the year 2012 and at that relevant point of time, the children of the Petitioner No.2, were merely six years and two years old respectively is also an admitted fact. There is nothing to show that the children of the Petitioner No.2 were raised in the family of her husband. Rather, the evidence which were placed clearly shows that it is the petitioner No.2 who was looking after both the children since the death of her husband. The evidence on record also clearly shows that the Mising Community has duly accepted the children and they have been brought up by keeping into account the traditions of the Mising Community. The learned counsel for the petitioners therefore submitted that when the children have been brought up in the community with the mother who admittedly belongs to a Scheduled Tribe, that too from such a nascent age, the disadvantages, indignation, deprivation etc. which have been faced by the community to which the children of the petitioner No.2 have been duly accepted would automatically be ingrained to their lives. Merely because of the fact that the petitioner No.2 herein is in a position to afford to enroll her children in good school cannot be the criteria to hold that the

community in which the children of the petitioner No.2 have been raised and brought up had not suffered indignation, disadvantages, deprivation etc. Referring to the judgment of the Constitution Bench of the Supreme Court in the case of ***Jarnail Singh & Others vs. Lacchmi Narain Gupta & Others***, reported in ***(2018) 10 SCC 396***, the learned counsel for the petitioners submitted that the whole object of reservation is to see the backward classes of the citizens move forward so that they may march hand in hand with other citizens of India on equal basis. The learned counsel for the petitioners therefore submitted that the creamy layer principle to the Scheduled Caste and Scheduled Tribes even if applied, but in doing so, the Constitutional mandate under Articles 341 or 342 of the Constitution cannot be tinkered. Therefore, referring to paragraph Nos.26 & 27 of the said judgment in the case of ***Jarnail Singh & Others*** (supra), the learned counsel for the petitioners therefore submitted that in the instant case, the fact that the children of the petitioner No.2 having provided proper educational opportunities by the mother, who is a Scheduled Tribe, the same would not render her children ineligible to be granted the benefit of Scheduled Tribe as per the Order of 1950.

13. Mr. R. Dhar, the learned counsel appearing on behalf of the respondent authorities including the SLSC submitted that in terms with the judgment in the case of ***Rameshbhai Dhabai Naika*** (supra), offsprings of an inter-caste marriage where the father belongs to the OBC as in the instant case, and the mother is a Scheduled Tribe, the presumption is stronger that the child has the caste of the father. However, the said presumption is rebuttable subject to fulfilling three conditions, namely, (i) the child has to show that he/she was brought up by the mother who belonged to the

Scheduled Caste or Scheduled Tribe; (ii) the child by virtue of being the offspring of a forward caste father, did not have any advantageous start in life, but on the contrary, suffered the deprivations, indignities, humility, and handicaps like any other member of the community to which his or her mother belonged; and (iii) the child was always treated as a member of the community to which a mother belonged and not only by that community, but the people outside the community as well. He therefore submitted that taking the above principles and applying the same to the impugned order, it is seen that the children of the petitioner No.2 have failed to prove that they had suffered the deprivation, indignities, humility, and handicaps like any other member of the community to which their mother belongs. The learned counsel for the respondents submitted that from the report so submitted by the Vigilance Committee, it is apparent that the petitioner No.2 who is a Gazette-I Officer have been providing her children, the best of the educational facilities, and as such, as there was no deprivation, indignities, humiliations and handicaps suffered by the children of the petitioner No.2. The impugned order therefore is in accordance with the dictum so passed by the Supreme Court in the case of ***Rameshbhai Dhabai Naika*** (supra).

14. On the allegation of violation of the principles of natural justice, the learned counsel submitted that though the principles of natural justice normally ought to have been applied, but there are exceptions. One of such exceptions is it that if no other conclusion were possible on the admitted or indisputable facts, it is not required to quash the order which was passed in violation of the principles of natural justice. In that regard, he referred to the judgment of the Supreme Court in the case of ***Aligarh***

Muslim University & Other vs Mansoor Ali Khan, reported in **(2000) 7 SSC 529**. In addition to that, the learned counsel for the Respondent Authorities also submitted that if this Court is of the opinion that the exception to the principles of natural justice did not apply to the present case that the only course available is to remit the matter to the SLSC for a fresh determination. In that regard, he referred to the judgment of the Supreme Court in the case of ***Shantidevi Kamaleshkumar Yadav vs. State of Maharashtra & Others***, reported in **(2008) 9 SCC 718**.

15. Mr. K. N. Choudhury, the learned senior counsel appearing on behalf of the respondent No.8 submitted likewise to the submission so made by Mr. R. Dhar, the learned counsel appearing on behalf of the respondent authorities. Additionally, he submitted the application so made by the petitioner No.2 to get the caste certificates of her children was with vested interest. He submitted that the petitioner No.2 had been all along in the social media boasting that her children should not take the benefit of reservation as they are the third generation. However, in order to implicate the respondent No.8 under the provisions of the Act of 1989 after filing of the FIR on 03.01.2020 applied for the caste certificates of both her children. He submitted that the necessity for applying the caste certificate for the Petitioner No.1 arose when a direction was issued by this Court in Criminal Petition No.55/2020 vide an order dated 23.07.2020 directing the Investigating Officer to submit a report as to whether the Petitioner No.1 herein belonged to SC/ST category by referring to the birth certificate, school certificate and other related documents. The learned Senior counsel submitted that on the very date when the Investigating Officer had filed his affidavit in Criminal Petition No.55/2020, the Petitioner No.2

had filed the application seeking the caste certificate.

16. The learned Senior counsel submitted that the Caste Certificate so obtained was on the basis of a certificate issued by an organization which had no authority to do so, and as such, the said caste certificate so issued ought to have been cancelled. He submitted that the basic intention for obtaining the caste certificate was not for the benefit of the children, but rather to wreak vengeance upon the respondent No.8 taking into account that if a person is accused under the Act of 1989, the person would not be entitled to bail. The learned senior counsel for the respondent No.8 submitted that in view of the judgment in the case of ***Rameshbhai Dhabai Naika*** (supra), the petitioners were required to prove that the Petitioner No.1 suffered the deprivation, indignities, humiliations and handicaps like any other member of the community and as the petitioners failed to prove anything to that regard, the question of interference with the impugned order does not arise. He further referring to a recent judgment of the Supreme Court in the case of ***Navneet Kaur, Harbhajansingh Kundles Vs. State of Maharashtra*** reported in ***2024 SCC OnLine SC 494*** and submitted that this Court ought not to enter into a probe regarding the credibility of the opinion of the SLSC inasmuch as this Court cannot substitute its own views. He further submitted that a perusal of the impugned order would show that the SLSC had duly considered the documents placed before it and after due application of mind and upon being satisfied rejected the caste claim of the petitioner No.1. The SLSC heard all the parties in detail complying with the principles of natural justice. Under such circumstances, the order of the SLSC ought not to be interfered in exercise of the powers under Article

226 of the Constitution.

17. This Court heard the learned counsels appearing on behalf of the parties and reserved its judgment on 13.08.2024. At the time of preparation of the judgment, a question arose as to whether at the instance of the Respondent No.8, the legality of the caste certificate issued to the Petitioner No.1 and her brother could have been entertained by the authorities which led to the present dispute. This question arose in view of the judgment of the Supreme Court in the case of ***Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others*** reported in ***(2013) 4 SCC 465*** wherein the Supreme Court held that to challenge the issuance of a caste certificate issued to the Scheduled Tribe, the person should be either be a Scheduled Tribe or in exceptional circumstances, when the actual person aggrieved because of ignorance, illiteracy, in articulation or poverty, such person cannot approach and then a person having no personal agenda can approach the Court. It is relevant to take note of that the Respondent No.8 belongs to the general caste and on account of he being implicated under the relevant provisions of the Act of 1989, he challenged the issuance of the caste certificate in favour of the Petitioner No.1. Under such circumstances, this Court pointed out the said aspect to the learned counsels representing the parties on 10.09.2024 and the matter was again heard on 19.09.2024.
18. The learned Senior counsel appearing on behalf of the Respondent No.8 submitted that the Respondent No.8 is a person aggrieved on account of the issuance of the caste certificate to the Petitioner No.1 as he would be now implicated under the appropriate provisions of the Act of 1989. The learned senior counsel submitted that the Act of 1989 cannot be applied

against the Respondent No.8 as the Petitioner No.1 was not a Scheduled Tribe and the caste certificate issued would be conclusive evidence, if not challenged.

19. This Court had given an anxious consideration to the said submissions made by the learned senior counsel. This Court had also taken note of the earlier proceedings detailed in the previous segments of the instant judgment wherein the learned Division Bench of this Court had directed that the SLSC should decide the validity of the caste certificate within a time frame.
20. In the opinion of this Court as to whether an offence under the Act of 1989 could have been charged with against the Respondent No.8 is purely a matter of an investigation, inquiry and trial of the said offence more so when for attracting an offence under the Act of 1989, there is no requirement of a caste certificate. The Writ Court in view of the judgment in ***Ayaaubkhan Noorkhan Pathan*** (supra) ought not to have entertained the challenge at the behest of the Respondent No.8. In fact, the judgment of the Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan*** (supra) was never placed before either the learned Coordinate Bench or the learned Division Bench. Be that as it may, taking into consideration that the learned Coordinate Bench and the learned Division Bench had directed the SLSC to decide the validity of the caste certificate, this Court would not like to further engage in respect to the said issue.
21. From the submissions so made on merits as referred to above, two questions for determination arise for consideration which are:

(i) Whether the impugned order is bad for violation of principle of natural justice or the exceptions to the principles of natural justice would apply?

(ii) Whether the SLSC while passing the impugned order had rightly applied the yardstick in coming to a finding that the Petitioner No.1 does not belong to the Scheduled Tribe Community of Assam?

22. It is the opinion of this Court in view of the submissions made by the learned counsel for the Respondent Authorities that the exception to the principles of natural justice would be applicable to the present facts and as such there is no requirement for quashing the impugned order, this Court finds it appropriate to deal with the second question for determination before analyzing and determining the question as regards violation of the principles of natural justice.

23. Let this Court therefore first take into account the impugned order dated 29.09.2021 and the reasons assigned and whether in doing so, the proper yardsticks had been applied. The SLSC in passing the impugned order based its decision, on the following aspects.

(a) The Petitioner No.1 had done her school education at Kendriya Vidyalaya, Karimganj, Vivekananda Kendra Vidyalaya, Majuli, Maharishi Vidya Mandir, Guwahati and Don Bosco School, Guwahati as a General Candidate. The finding is based upon the Vigilance Report wherein reference is made to the Transfer Certificate dated

18.03.2019 issued by the Vivekananda Kendra Vidyalaya, Majuli against the question "whether the candidate belongs to the Scheduled Caste or Scheduled Tribe" though it was written as "Yes (ST)" the same was struck off.

(b) The schools where the Petitioner No.1 had undergone her studies are reputed schools which does not indicate any educational disadvantage or disability suffered by her.

(c) To sustain the claim of the benefits of Scheduled Tribe, one must show that he/she suffered disabilities socially, economically and educationally cumulatively. The authority concerned before whom such claim is made is duty bound to satisfy itself that the applicant suffered disabilities socially, economically and educationally before such certificate is issued.

(d) In the Vigilance Report, although the Petitioner No.2 has been mentioned as Miri (Mising) Community and ordinarily hailed from Lakhimpur District, she had only little communication/link with the people of her native village. It was further mentioned that the Petitioner No.2 is a permanent resident of Beltola College Road, Bongaon, Guwahati. The local people of Beltola College Road locality upon being examined have mentioned that the children of the Petitioner No.2 have not gone through discrimination, deprivation, indignities and humiliations although the Petitioner No.2 belonged to the Scheduled Tribe Community.

(e) The Petitioner No.1 though is an offspring from a marriage between a Scheduled Tribe i.e. the Petitioner No.2 and a non-tribal father, the Petitioner No.1 had been brought up by her mother and there was no evidence that the Petitioner No.1 had suffered disabilities-socially, economically and educationally cumulatively. It was observed that the Petitioner No.2 is an APS Officer belonging to Class-I cadre in the Government of Assam and she has been providing good educational facilities to her daughter i.e. Petitioner No.1 in reputed schools of the State. It was mentioned that the statements provided by the members of Mising Community merely stated that the children of the Petitioner No.2 belonged to the Mising Community and the said statements do not substantiate as regards tribal customs, way of life etc. of the children or that the children of the Petitioner No.2 suffered disadvantages or disabilities due to their mother's ST status. The available evidence suggested that good education and amenities were made available and accessible to the Petitioner No.1 and the condition "that by virtue of being the daughter of a forward caste father (OBC), she did not any advantageous start in life but on the contrary suffered the deprivation, indignities, humiliations and handicaps like any other member of the community to which her mother belonged" was not fulfilled.

24. The above being the reasons assigned for passing the impugned order which is based upon a report submitted by the Vigilance Committee, the question therefore arises as to whether the same is arrived at by

applying the proper yardstick as per the Constitutional mandate and the settled law. Before proceeding to analyze and determine the above question, it is necessary for clearing out certain facts which would be essential for arriving at a proper adjudication. These factual aspects pertain to certain admitted propositions of facts or aspects where there is no denial in the Vigilance Report or in the impugned order.

(i) There is no denial to the fact that the Petitioner No.2 is a Scheduled Tribe within the meaning of the Order of 1950.

(ii) There is no denial to the fact that the husband of the Petitioner No.2 who is the father of the Petitioner No.1 expired on 04.10.2012 and the Petitioner No.1 at that relevant point of time was merely 6 years and her brother was only 2 years old.

(iii) There is no denial to the fact that the Petitioner No.2 who is the mother of the Petitioner No.1 had after the death of the father raised the Petitioner No.1 along with her brother.

(iv) There is no material in the Vigilance Report that after the death of the husband of the Petitioner No.2, the Petitioners along with the son of the Petitioner No.2 were residing with the family of the husband of the Petitioner No.2.

(v) There is also no material that the Petitioner No.1 along with her brother are residing with their grandparents from their father's side.

(vi) The Vigilance Report as well as the impugned order admits that the Petitioner No.1 and her brother have all along been with the Petitioner No.2 and the Petitioner No.2 though on account of her Government service had been transferred to various Districts of Assam but her permanent address is the house of the father of the Petitioner No.2.

(vii) The Vigilance Report as well as the impugned order are completely silent as to what advantages the Petitioner No.1 or her brother had after the death of their father who was from the Forward Class (OBC).

(viii) It is also very pertinent to mention that from the discernible facts that the Petitioner No.1 and her brother had to be brought up by her mother on account of the unfortunate death of their father at their tender age.

25. On the other hand, at the cost of repetition, it is reiterated that the basis of the decision making process was the Vigilance Report wherein it was mentioned that the Petitioner No.2 is a Grade-I Gazetted Officer belonging to the Assam Police Service of the Government of Assam and that she has provided good educational facilities to the Petitioner No.1 and additionally, the Petitioner No.2 had little communication with the people of her native village. In addition to that, the Petitioners have failed to prove that the Petitioner No.1 suffered deprivation, indignation, humiliations and handicap like any other member of her mother's community.

26. In the backdrop of the above proposition of facts and the pedestal on which the impugned order stands, important constitutional questions arise as to how to apply the law laid down by the Supreme Court in the case of ***Rameshbhai Dhabai Naika (supra)*** taking into account the constitutional provisions. For doing so, it would be relevant first to discuss the fundamental rights under Article 14, 15 and 16 of the Constitution read with Article 38 and 46 and the constitutional mandate contained in Part XVI of the Constitution including Article 341 and 342 of the Constitution.
27. The trinity of Articles 14, 15 and 16 of the Constitution encompasses an equality code in pursuance to the preambular values of equality of status, opportunity and social justice. Article 14 of the Constitution lays down general principles governing equality by postulating that there shall be "equality before the law" and "equal protection of laws". Both these expressions are different in content and its applicability. The expression "equality before the law" is derived from the English Common Law and entails absence of special privileges for any individual within the territory. Be that as it may, it should however not be confused that it means that the same law should apply to everyone. On the other hand, it means that the same law should apply to those who are similarly situated. The expression "equal protection of laws" means that amongst the equals, law must be equally administered. This very basis would show that it enjoins the State with the power to reasonably classify those who are differently placed. The mandate of "equal protection of law" casts a positive obligation on the State to

ensure that everyone may enjoy equal protection of laws and no one is unfairly denied this protection. In essence the guarantee of equality entails that all persons in like circumstances must be treated alike. In other words, there must be a parity of treatment under parity of conditions.

28. At this stage, this Court finds very pertinent to refer to the speech of Dr. B. R. Ambedkar who headed the Committee for drafting the Constitution of India. The speech was delivered on 25.11.1949, while replying to the debate on the final draft of the Constitution i.e. one day prior to 26.11.1949 i.e. the date when the Constituent Assembly adopted, enacted and gave to our country the Constitution of India. The relevant portion of his speech is reproduced herein under:

"The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social

plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."

(emphasis supplied to the underlined portion)

29. The above quote seems to be the spinal cord of the equality principle enshrined in our Constitution. Merely having a political democracy sans a social and economic democracy was never in the minds of the framers of our Constitution. To have a socio economic democracy, there is a requirement to provide opportunities to all classes so that our country has a political democracy in true sense of the people, by the people and for the people.
30. In the backdrop of the above, let the ambit of Articles 15 and 16 of the Constitution be taken note of. Article 15(1) of the Constitution prohibits discrimination on the grounds of religion, caste, sex, place of birth etc.,

Article 16(1) guarantees equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. However, Article 15(4) of the Constitution enjoins upon the State despite the above injunction provided in Article 15(1) of the Constitution and Article 29(2) of the Constitution to make special provisions for the advancements of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes. In the similar matter, Article 16 (4) stipulates that the State can make provisions for reservation of appointments or posts in favour of the backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State.

31. At this stage, this Court finds it very pertinent to take note of the majority opinion rendered by His Lordship Dr. D. Y. Chandrachud, C.J. in the case of ***State of Punjab and Others Vs. Davinder Singh and Others*** reported in ***(2024) SCC OnLine SC 1860*** on the objective and yardstick for identifying the beneficiary class under Articles 15(4) and 16(4) of the Constitution. At paragraph No.173 , His Lordships observed as herein under:

"173. In view of the discussion above, the following principles are summarized with respect to the objective and yardstick for identifying the beneficiary class under Articles 15(4) and 16(4):

- a. The beneficiary class in Article 15(4) must be a socially and educationally backward class. "Socially and educationally backward" are not mutually exclusive concepts. The phrase constitutes a constitutional recognition of the sociological reality that educational backwardness is*

caused by the social backwardness of the class;

b. The beneficiary class in Article 16(4), similar to the class under Article 15(4), must predominantly be socially backward. The purpose of both the provisions is to ensure substantive equality of opportunity to the socially backward communities. The beneficiary class in Article 16(4) subsumes the socially and educationally backward classes under Article 15(4);

c. The qualifier of inadequate representation in Article 16(4) is not mutually exclusive of the requirement of backwardness. The inadequate representation of the class in the services of the State must be because of social backwardness; and

d. The adequacy of representation must be determined based on the standard of effective representation and not numerical representation."

The above exposition therefore makes it clear that the social backwardness has a direct correlation with the inadequate representation of the class in the service of the State and that the educational backwardness is a result of the social backwardness of the class.

32. At this stage, it would be apposite to observe that Article 38 and 46 of the Directive Principles of State Policy are provisions inserted to so that the goal to have a political democracy in the truest sense is achieved. That apart, Part XVI of the Constitution deals with special provisions relating to certain classes. Therefore, it appears that the Constitution makers had envisioned that the benefits of development are percolated to every citizen including the class of citizens who are socially and

educationally backward. In fact, the judgment of the Supreme Court in the case of ***Indra Swahney Vs. Union of India and Others*** reported in ***(1992) Supp. (3) SCC 217*** had dealt with this issue that the socially and educationally backward citizens are to be treated as a class on its own. The majority opinion was delivered by His Lordships Jeevan Reddy J (as His Lordships then was). At paragraph No.779, he dealt with the issue that the class referred to is a homogeneous class as well as its characteristics. The relevant part of Paragraph No.779 of the opinion is reproduced herein below:

"779. The above material makes it amply clear that a caste is nothing but a social class — a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. To repeat, it is a socially and occupationally homogeneous class. Endogamy is its main characteristic. Its social status and standing depends upon the nature of the occupation followed by it. Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. A few members may have gone to cities or even abroad but when they return — they do, barring a few exceptions — they go into the same fold again. It doesn't matter if he has earned money. He may not follow that particular occupation. Still, the label remains. His identity is not changed."

33. The above extracted portion of the majority opinion in the case of ***Indra Swahney (supra)*** portrays the characteristics of the socially and educationally backward class of citizens. In fact, in a recent judgment of the Supreme Court in the case of ***Neil Aurelio Nunes***

(OBC Reservation) and Others Vs. Union of India and Others reported in **(2022) 4 SCC 1**, the Supreme Court had the occasion of dealing with the aspect that the identification as regards the benefits under Article 16(4), Article 15(4) and Article 15(5) are to be group centric and not individual centric. In paragraph No.31 of the said judgment, the Supreme Court relying upon the judgment rendered in the case of ***State of Kerala and Others Vs. N. M. Thomas and Others*** reported in **(1976) 2 SCC 310** opined that Article 16(4), Article 15(4) and Article 15(5) of the Constitution employ group identification as the method through which substantive equality can be achieved. It was observed that though it may lead to an incongruity where individuals members of an identified group may not be backward or individuals belonging to a non-identified group may share certain characteristics of backwardness with members of identified group, however, this did not change the underline rationale of the reservation policy that seeks to remedy the structural barriers that the disadvantage group face in advancing in the society. It was observed that individual difference may be a result of privilege, fortune or circumstances but it cannot be used to negate the role of reservation in remitting the structural disadvantage that certain group suffer. Paragraph 31 of the said judgment is quoted herein under.

"31. *Even if the Judges in N.M. Thomas case [State of Kerala v. N.M. Thomas, (1976) 2 SCC 310 : 1976 SCC (L&S) 227] differed on whether Article 16(1) is individual-centric or group-centric, they nonetheless accepted that Article 16(4) is crucial to achieve substantive equality that is envisaged under Article 16(1). Articles 16(4), 15(4), and 15(5) employ group identification as a*

method through which substantive equality can be achieved. This may lead to an incongruity where individual members of an identified group may not be backward or individuals belonging to the non-identified group may share certain characteristics of backwardness with members of an identified group. However, this does not change the underlying rationale of the reservation policy that seeks to remedy the structural barriers that disadvantaged groups face in advancing in society. Reservation is one of the measures that is employed to overcome these barriers. The individual difference may be a result of privilege, fortune, or circumstances but it cannot be used to negate the role of reservation in remedying the structural disadvantage that certain groups suffer."

34. In the backdrop of the above, it is also relevant to take note of why even as we approach the 75th year of Our Constitution, these structural barriers are faced by the disadvantaged groups. The rationale appears to be for the reason explained by the Supreme Court in the above quoted paragraph No.779 in the case of ***Indra Swahney (supra)***. The question however arises why such characteristics developed amongst these disadvantaged class of citizens. The reasons have been succinctly explained by the Constitution Bench of the Supreme Court in the case of ***Chebrolu Leela Prasad Rao and Others Vs. State of Andhra Pradesh and Others*** reported in ***(2021) 11 SCC 401*** wherein the Constitution Bench observed why the Scheduled Caste and Scheduled Tribes had been provided with special measures. Paragraph Nos. 105 and 106 of the said judgment being relevant are reproduced herein below:

"105. *The Scheduled Castes and Scheduled Tribes have been provided*

with special measures to make them equal to the others. Efforts have been made to protect their land and property by enacting various laws. Special provisions have also been carved out to preserve their human dignity with respect, in the shape of trusts in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Scheduled Castes and Scheduled Tribes were making a struggle for freedom and various rights in the country. They suffered discrimination; fruits of development have not percolated down to them. They remained an unequal and vulnerable section of the society and treated for centuries as outcasts socially. That is the basis for providing them reservation and special treatment to provide them upliftment and to eradicate their sufferings. We have not been able to eradicate untouchability in the real sense so far and to provide safety and security to downtrodden class and to ensure that their rights are preserved and protected, and they equally enjoy frugal comforts of life.

106. *Concerning tribals, we see that there are several schemes for their upliftment, but we still see that at certain places, they are still kept in isolation and are not even able to get basic amenities, education, and frugal comforts of life. These classes have an equal right to life available to all human beings. Considering the social backwardness, which includes economic aspects also, these are the classes that have suffered historic disabilities arising from discrimination, poverty, educational backwardness to provide them empowerment and to make them part of the mainstream. Special provisions have been carved out in the Constitution. Article 16(4) is not an exception to Article 16(1) being part of equality. The reservation can be rectified. Section 16(4) aims at group backwardness. Reservations are provided due to discrimination and disadvantages suffered by the Backward Classes, Scheduled Castes and Scheduled Tribes for sharing the State power.”*

35. The above quoted paragraphs would show that the Scheduled Caste

and Scheduled Tribe had historically suffered discrimination in a sense that the fruits of development have not percolated down to them. The discrimination is not something which happened in the present date but these backward classes had remained unequal and vulnerable sections of the society and treated for centuries as outcast socially. The reservations and special treatment therefore is to provide them upliftment and to eradicate their sufferings. Further, it is also apposite to observe that the basic reason to provide the special treatment is to provide them empowerment and to make them part of the mainstream so they can be a part of the social democracy as envisaged by the founding fathers of our Constitution. It would also be very pertinent to observe that the deprivation, indignities, handicaps and humiliations faced by the socially backward class are ingrained historically and still continue till date.

36. At this stage, let this Court deal with the impugned order in the context of the above analysis. The SLSC in the impugned order had observed that the Petitioner No.2 though belonged to the Scheduled Tribe but she is a Class-I Gazetted APS Officer who had little communication/links to her native village. But the question arises as to whether the Petitioner No.2 being a Class-I Gazetted Officer and having little links/communication with her native village makes her not a Scheduled Tribe. In the opinion of this Court, if such a yardstick is permitted then it would result in making individual centric classification which is not permissible. Therefore, merely because the Petitioner No.2 is a Gazetted Class-I Officer, she does not lose the characteristics of a

Scheduled Tribe. In this regard, this Court finds it relevant to refer to the observations of the Constitution Bench of the Supreme Court in the case of ***Jarnail Singh (supra)*** wherein at paragraph No.26, the Constitution Bench observed that the Presidential list under Article 341 and 342 of the Constitution cannot be tinkered merely because certain citizens from the backward classes are excluded from the reservation on account of advantages. They continue to remain in the list. Paragraph No.26 of the said judgment is reproduced below:

"26. The whole object of reservation is to see that Backward Classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation."

37. Moving forward, this Court further finds it relevant to take into consideration the aspect dealt with by the SLSC to the effect that the Petitioner No.2 had little link/communication with her native village.

The said observation is based upon the enquiry report. In the said enquiry report, it was mentioned that during verification, it came to light that the Petitioner No.2 hailed from village Chabati, North Lakhimpur and belonged to the 'MIRI' Tribe. It was mentioned in the report that the father of the Petitioner No.2 migrated to Guwahati and the permanent address is House No.54, Beltola College Road, Basistha, Guwahati. The Petitioner No.2 on account of her Government job has been residing in the Government allotted quarters from time to time. Further enquiry revealed that the father of the Petitioner No.2 who retired as a Superintendent of Police left his native village in Lakhimpur and used to visit his native village occasionally. On the basis of the above, it was assumed that the Petitioner No.2 had little communication/link with the people of her native village. On the basis of the aforesaid report, the SLSC had opined that the Petitioner No.2 had little communication/link with the native village.

38. This Court finds it appalling the basis arrived at by both the Enquiry Officer as well as the SLSC to arrive at the observations that the Petitioner No.2 had little communication/link with her native village. It is important to note that the 'MIRI' Tribe is a Scheduled Tribe in terms with the Order of 1950 insofar as the entire State of Assam excluding the Autonomous Districts of Karbi Anglong and North Cachar Hills. Therefore, the Petitioner No.2 would be considered as Scheduled Tribe in the State of Assam except the Autonomous Districts of Karbi Anglong and N.C. Hills. The natural corollary therefore is that whether she resides at her native place or not, she continue to remain a

Scheduled Tribe. The Vigilance Report is completely silent as to whether there is any 'MIRI' community in other places of the State of Assam except the native village of the Petitioner No.2. On the other hand, the certificates so enclosed to the application filed by the Petitioner No.2 as regards the acceptance of her children by the 'MIRI' community clearly shows that at Guwahati, there are 'MIRI' community people residing and in fact, at Guwahati, there is also an organization in the name and style of 'ALL GUWAHATI MISING KEBANG'. The question which the Vigilance Commission or the SLSC ought to have addressed was whether the children of the Petitioner No.2 were accepted by her community and not whether the children of the Petitioner No.2 were accepted by the native village. In this aspect also, this Court is of the opinion that the SLSC had committed a fundamental mistake.

Apart from the said, it would also show that the Enquiry Report as well as the impugned order by the SLSC on this aspect that the Petitioner No.2 had little communication/link with her native village is based upon conjectures and surmises inasmuch as there is nothing mentioned that the Enquiry Officer visited the native village of the Petitioner No.2 which was otherwise mandated at Paragraph 13 (5) of the Judgment of the Supreme Court in ***Kumari Madhuri Patil (supra)***

39. Before proceeding further, this Court would briefly deal with Article 341 and 342 of the Constitution as the same touches on the above

discussions. The said Articles are included with Part XVI of the Constitution which specifically deals with "Special Provisions relating to Certain Classes". A perusal of the Part XVI shows various forms of reservations provided to the Scheduled Castes and Scheduled Tribes as well as other Classes of citizens. Article 341 deals with Scheduled Caste whereas Article 342 deals with Scheduled Tribes. In terms with Clause (1) of Article 342 of the Constitution, the President may with regard to any State or Union Territory and when it is a State after consultation with the Governor by public notification specify the Tribes or Tribal communities or parts of or groups within Tribes or Tribal communities which shall for the purpose of Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory as the case may be. In this regard, it is relevant to observe that in the Order of 1950 the 'MIRI' community is enlisted as a Scheduled Tribe for the entire State of Assam except the Autonomous Districts of Karbi Anglong and N.C. Hills (Now Dima Hasao District).

40. Clause (2) of Article 342 of the Constitution provides that it is only the Parliament who may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) of Article 342, any tribe or tribal community or parts of or groups within any tribe or tribal community. In terms with Clause (2) of Article 342 of the Constitution, it is categorically mentioned that a notification issued under Clause (1) of Article 342 of the Constitution shall not be varied by any subsequent notification. In this regard, it is very relevant to take note of that Dr. B. R. Ambedkar while proposing the inclusion of

Article 300A and 300B of the Draft Constitution which corresponds to Article 341 and 342 of the Constitution observed that once notified any elimination from the list or an addition to the list had to be made by the Parliament and not by the President. This limitation, he observed was to eliminate “political factors from disturbing the list”. Therefore, unless the Order of 1950 is not amended in the manner provided under Clause (2) of Article 342 of the Constitution, the said list notified under Clause (1) of Article 342 of the Constitution is conclusive. In other words, a person belonging to a Tribe enlisted in Order of 1950 shall continue to remain as a Scheduled Tribe irrespective of how much advancement the community had made till the Order of 1950 is not amended as mandated under Clauses (2) of Article 342 of the Constitution. The proposition of law settled by the Constitution Bench of the Supreme Court in paragraph No.26 quoted above is to that effect.

41. Coming back again to the facts of the instant case, it would therefore be apparent that merely because the father of the Petitioner No.2 was or even the Petitioner No.2 being a high officials in the Police Administration respectively had no relevance to the adjudication as to whether the Petitioner No.1 belongs to the ‘MIRI’ Community which is a Scheduled Tribe. Therefore, apparently, the SLSC had taken into consideration certain irrelevant factors which passing the impugned order.
42. Further to the above, the judgment of the Constitution Bench of the

Supreme Court in the case of ***Chebrolu Leela Prasad Rao (supra)*** would show that these backward/disadvantaged class had historically suffered discrimination, deprivations, indignities and humiliations in a sense that the fruits of the development have not percolated down to them and they have been treated as outcasts for centuries. It was observed that these backward classes have remained unequal and vulnerable sections of the society. The reservations and special treatment is for the reason to provide them opportunities so that they could be brought to the mainstream. Therefore, the deprivation, handicaps, indignities and humiliations are ingrained to these backward classes historically and they continue to face the same as a community. As observed by the Supreme Court in the case of ***Neil Aurelio Nunes (OBC Reservation) (supra)***, at Paragraph 31 quoted above, there may be persons belonging to these backward/disadvantaged class who may on account of privilege, fortune or circumstances may not have suffered the deprivations, indignities or humiliations but the same shall not have any impact on the role of special treatment/reservations in remedying the structural disadvantages that the group suffer.

43. It is further relevant to note another aspect while this Court is dealing with the aspect of deprivations and handicaps being faced by these backward classes. In the case of ***B.K. Pavitra and Others Vs. Union of India and Others reported in (2019) 16 SCC 129***, the Supreme Court observed how apparent neutral systems of examination perpetuate social inequalities. Paragraph Nos. 134 and 135 of the said judgment being relevant are reproduced herein under:

"134. *It is well settled that existing inequalities in society can lead to a seemingly "neutral" system discriminating in favour of privileged candidates. As Marc Galanter notes, three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of "merit". These are:*

"... (a) economic resources (for prior education, training, materials, freedom from work, etc.); (b) social and cultural resources (networks of contacts, confidence, guidance and advice, information, etc.); and (c) intrinsic ability and hard work..."

135. *The first two criteria are evidently not the products of a candidate's own efforts but rather the structural conditions into which they are borne. By the addition of upliftment of SCs and STs in the moral compass of merit in government appointments and promotions, the Constitution mitigates the risk that the lack of the first two criteria will perpetuate the structural inequalities existing in society."*

44. The above quoted paragraph is very pertinent for understanding the actual deprivation faced by the backward/disadvantaged class even those who on account of privileges, fortune and circumstances would be well to do. The deprivations and handicaps are on account of the lack of socio cultural resources viz. network of contacts, confidence, guidance, advice, information etc. These are very important advantages which people born and brought up in a forward class environment have. The Supreme Court in the case of **Neil Aurelio Nunes (OBC Reservation) (supra)** had dealt with the said aspect in a more elaborate manner at paragraph 33 of the said judgment. The observations made therein clearly shows the benefits which a citizen

being born and brought up in a forward class have compared to a citizen belonging to a backward class. Paragraph No.33 of the said judgment is reproduced herein below:

"33. *The crux of the above discussion is that the binary of merit and reservation has now become superfluous once this Court has recognised the principle of substantive equality as the mandate of Article 14 and as a facet of Articles 15(1) and 16(1). An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate. However, widespread inequalities in the availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system. Special provisions (like reservation) enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also include their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family. [K.V. Syamprasad, "Merit and caste as cultural capital : Justifying affirmative action for the underprivileged in Kerala, India", Journal for Critical Education Policy Studies, Vol. 17, pp. 50-81 (2019).] The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. They have to put in surplus effort to compete with their peers from the forward communities. [K.V. Syamprasad, "Merit and caste as cultural capital : Justifying affirmative action for the underprivileged in Kerala, India", Journal*

for Critical Education Policy Studies, Vol. 17, pp. 50-81 (2019).] On the other hand, social networks (based on community linkages) become useful when individuals seek guidance and advice on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure. Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as "merit" reproducing and reaffirming social hierarchies."

45. In the backdrop of the above analysis, let this Court now deal with the development of law in respect to offspring of an inter-caste marriage. In the case of ***Valsamma Paul Vs. Cochin University and Others*** reported in ***(1996) 3 SCC 545***, the dispute arose as to whether the Appellant therein namely Valsamma Paul who was Syrian Catholic woman (Forward Caste) by birth but married to a Latin Catholic man (Backward Class) by virtue of her marriage would be entitled to appointment to the Post of Lecturer that was reserved for Latin Catholic (Backward Class Fishermen Community). The Full Bench of the Kerala High Court held that though Appellant was married according to Canon Law, but being a Syrian Christian by birth, she could not by marriage with a Latin Catholic become a member of that class nor could she claim the status of the Backward Class by marriage. The decision in the said case is based upon two reasons for disallowing the appellant the benefits of reservation under Article 15(4) and 16(4) of the Constitution. First, being born in a forward class, she had an advantageous start in her life and she had not gone through the said disabilities, disadvantages, indignities or suffering as other

members of the backward class. Secondly claiming the benefit of reservation by getting transplanted into a backward class by means of marriage i.e. to say through voluntary mobility would amount to fraud on the Constitution. The relevant portion of paragraph No.34 of the said judgment is reproduced herein under:

"34. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution."

46. In the case of ***Punit Rai Vs. Dinesh Choudhary*** reported in **(2003) 8 SCC 204**, the dispute arose relating to an election held in 204, Fatua Reserved Assembly Constituency (SC) in the State of Bihar in the year 2000. The appellant therein was a nominee of the Janata Dal (U). He claimed to be of Scheduled Caste. On the other hand, the Respondent was a nominee of the Janata Dal (R) belonging to the Pasi Community which is also a Scheduled Caste Community. The Appellant therein objected to the candidature of the Respondent on the ground that the Respondent did not belong to the Scheduled Caste Community; rather he was a Kurmi which falls in the category of Other Backward Classes. Irrespective of the said objection, the nomination paper was accepted and the Respondent therein was elected. An election petition was filed challenging the candidature of the

Respondent therein. The Respondent took a plea that his father who is a Kurmi by caste had married one Deo Kumari Devi at village Adai who is Pasi by caste and the Respondent and his brother were born to the said Smti Deo Kumari Devi. It was also contended by the Respondent that they stayed in the village Adai with their mother in the house of their maternal uncle until they attained majority whereupon, they shifted to Patna. In the said case, there were two judgments passed. The Majority Opinion was rendered by His Lordship Brijesh Kumar, J. (as His Lordship then was) wherein it was opined that the marriage between Bhagwan Singh with Deo Kumari Devi could not be proved and accordingly came to a finding that the Respondent therein could not claim the benefit of being Scheduled Caste as the marriage between Bhagwan Singh and Deo Kumari Devi was not proved. In the opinion rendered by His Lordship S. B. Sinha, J (as His Lordships then was) there was an observation made to the effect that the person under the customary Hindu Law would be inheriting his caste from his father and as the Respondent's father was not a Scheduled Caste, the Respondent could not have been considered as the member of the Scheduled Caste. This opinion of His Lordships S. B. Sinha, J, was dealt with specifically by the Supreme Court in the case of ***Rameshbhai Dabhai Naika (supra)*** at paragraph Nos. 22, 23 and 24 and observed that it was difficult to clothe the observations of His Lordships S. B. Sinha, J, with precedential value especially in view of the fact that the question did not arise at all after the decision of the majority of two Judges.

47. In the case of ***Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others*** reported in ***(2005) 2 SCC 244***, the question which fell for decision is whether the Appellant belonged to a Scheduled Tribe and hence qualified to contest the election from a Constituency reserved for a Scheduled Tribe. The Supreme Court held that the Appellant was not qualified as she could not have been regarded as a Scheduled Tribe on account of her marriage with a Scheduled Tribe. The relevant portion of paragraph No.10 of the said judgment is reproduced herein below:

"10. Even then, this Court categorically laid down that the recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class would not entitle her to the facility of reservation given to a backward community. The High Court has applied this decision to a seat reserved in an election in terms of Article 332 of the Constitution. We see no reason why the principle relating to reservation under Articles 15(4) and 16(4) laid down by this Court should not be extended to the constitutional reservation of a seat for a Scheduled Tribe in the House of the People or under Article 332 in the Legislative Assembly. The said reservations are also constitutional reservations intending to benefit the really underprivileged and not those who come to the class by way of marriage. To the extent the decision in Horo [(1972) 1 SCC 771 : AIR 1972 SC 1840] can be said to run counter to the above view, it cannot be accepted as correct. Even otherwise, in the absence of evidence on the relevant aspects regarding marriage in tribal form and acceptance by the community, the decision in Horo [(1972) 1 SCC 771 : AIR 1972 SC 1840]

cannot come to the rescue of the appellant. On a consideration of the relevant aspects, we are of the view that whether it be a reservation under Articles 15(4) or 16(4) or 330 and 332, the said reservation would benefit only those who belong to a Scheduled Caste or Scheduled Tribe and not those who claim to acquire the status by marriage, like the appellant in this case. Thus, in our view, the High Court was fully justified in coming to the conclusion that the appellant could not claim the right to contest a seat reserved for a Scheduled Tribe in terms of Article 332 of the Constitution merely by virtue of her marriage to a person belonging to a Scheduled Tribe."

48. In the case of ***Anjan Kumar Vs. Union of India and Others*** reported in **(2006) 3 SCC 257**, the issue involved therein was as regards the status of a child born to a Scheduled Tribe mother from a Forward caste father. The question therefore which arose is whether the son so born would be considered to belong to the Scheduled Tribe. The Supreme Court in the said judgment applied the test of acceptance in the community to which the woman gets married and came to a finding on the basis of the facts involved that the Appellant therein was brought up in the environment of a forward community and did not suffer from any disability from the society from which he belonged. Paragraph No.14 of the said judgment is quoted herein below:

"14. In view of the catena of decisions of this Court, the questions raised before us are no more res integra. The condition precedent for granting tribe certificate being that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-

tribal husband—Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. A person not belonging to the Scheduled Castes or Scheduled Tribes claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste certificate and obtaining appointment/admission from the reserved quota will have far-reaching grave consequences. A meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. The reserved post will go into the hands of non-deserving candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution.”

49. Before proceeding further, this Court finds it relevant to refer to a judgment of the learned Full Bench of the Kerala High Court in the case of ***M.C. Valsala and Another Vs. State of Kerala and Others*** reported in ***AIR 2006 Ker 1***. The specific issue before the learned Full Bench of the Kerala High Court was whether children born out of inter-caste married couple could claim the status of a Scheduled Caste/Scheduled Tribe for the benefit of reservation in admission to educational institution and in public employment on the mere fact that one of their parents belongs to Scheduled Caste/Scheduled Tribe. The observations of the learned Full Bench of the Kerala High Court at Paragraph Nos. 19 and 20 are relevant and the same are quoted herein below:

“19. Therefore, if father belongs to Scheduled Castes/Scheduled Tribes the child may inherit his caste from his father by operation of personal law.

Even then, in order to get the benefit of Arts. 15(4), 16(4) or 16(4A) read with Articles 341 and 342 of the Constitution, the person has to further establish that he still uses the caste of his father subject to same disabilities, disadvantages, sufferings etc. of that caste or tribe. Unless and until the person establishes those factors the mere fact that by virtue of the personal law he has inherited his caste status from his father or mother, as the case may be, by itself would not be sufficient to show that he is still subject to the same disadvantages. Even if father belongs to Scheduled Castes/Scheduled Tribes, child could be brought up in the company of the mother who belongs to forward caste without subjecting him to any sufferings, disadvantageous, incapacity or ignominy which would normally be suffered by the members of Scheduled Castes/Scheduled Tribes and vice versa like mother belongs to Scheduled Castes and father belongs to non-Scheduled Castes and the child is brought up by the father and would not be subjected to the disadvantages and sufferings as if he is a member of Scheduled Castes/Scheduled Tribes.

20. *Children born of inter-caste marriage of which either of the parents belongs to Scheduled Caste/Scheduled Tribe should have a caste status, either that of the mother or that of the father. Articles 15(4), 16(4) and 16(4A) are intended to remove all handicaps and disadvantages suffered by members of Scheduled Castes/Scheduled Tribes. Suppose a neglected or deserted SC/ST woman brings up her child, with the same handicaps, suffering, disadvantages, attached to that caste/tribe, whose father belong to non-SC/ST, it is too harsh to deny the benefit to that child on the mere reason that the child's father belongs to non-Scheduled Castes/Scheduled Tribes caste. Person who claims the status of Scheduled Castes/Scheduled Tribes of his/her father or mother has to establish that on his/her birth, he/she is subjected to same social disabilities and also following the same customs and traditions and the community has accepted that person to its fold."*

50. Be that as it may, the position of law seems to have been fairly settled by the Supreme Court in the case of ***Rameshbhai Dabhai Naika (supra)*** wherein the Supreme Court was dealing with a question as to whether an irrefutable presumption arises when a child born out of a forward caste father and a Scheduled Tribe mother would get the status of the father and not the mother. In the said judgment, the Supreme Court dealt with various judgments including the above referred judgments. At paragraph No.48 of the said judgment, the Supreme Court observed as follows:

"48. It is also clear to us that taking it to the next logical step and to hold that the offspring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and is brought up as the member of that community suffering all the deprivations, humiliations, disabilities and handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the Constitution."

51. Further to that, the Supreme Court in ***Rameshbhai Dabhai Naika (supra)*** dealt with the judgment of the learned Full Bench of the Kerala High Court in the case of ***M.C. Valsala (supra)*** and agreed with the view so taken. Infact, paragraph 48 as quoted above appears to be similarly worded to paragraph 20 of the Judgment in ***M.C.***

Valsala (supra). In addition to that, the Supreme Court considered the judgment of the learned Division Bench of the Delhi High Court in the case of ***Kendriya Vidyalaya Sangatan Vs. Shanti Acharya Sisengi*** reported in **(2011) 176 DLT 341** wherein the Delhi High Court amongst others observed that the offshoot of wedlock between Scheduled Caste/Scheduled Tribe female and a male belonging to a Forward community cannot claim Scheduled Caste/Scheduled Tribe status unless he/she demonstrates that he/she had suffered the disabilities suffered by the members of the community of his/her mother. The Supreme Court further dealt with the judgment of the learned Division Bench of this Court in the case of ***Arabinda Kumar Saha Vs. State of Assam*** reported in **(2001) 3 GLT 45** wherein the Learned Division Bench of this Court found and held that though the father of the writ petitioner was admittedly a Forward caste man but as the petitioner was brought up as a member of the Scheduled Caste and both the Scheduled Caste community as well as the non-scheduled caste people treated the petitioner as a Scheduled Caste and accordingly, the Petitioner was held to be a Scheduled Caste.

52. On the basis of the above judgments, the Supreme Court in the case of ***Rameshbhai Dabhai Naika (supra)*** had summed up its conclusion at paragraphs 54 and 55 which are quoted herein under:

"54. *In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact*

to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. *In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well."*

53. From the above quoted paragraphs in the case of **Rameshbhai Dabhai Naika (supra)**, it would be seen that in an inter-caste marriage or a marriage between a tribal and non-tribal, the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. There may be a presumption that the child has the caste of the father and the presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal, the husband belongs to a forward caste. But by no means, the

presumption is conclusive or irrebuttable. It is then also open to proof by leading evidence that he/she has been brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe and by virtue of being the offspring of a forward caste mother, he/she did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, the offspring has always been treated as a member of the community to which his/her mother belonged and not only by that community but by the people outside the community as well.

54. From the above conclusion of the Supreme Court, what is required to be shown and proved in the case of the offspring of a Forward Caste father and Schedule Tribe mother are:

- (A). The Offspring was brought up by the mother who belongs to the Schedule Tribe community; and
- (B). The Off spring being born to a forward caste father, the offspring did not have any advantageous start in life. On the contrary, suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged; and
- (C). The Off spring was always treated as a member of the community to which her mother belonged not only by that

community but by the people outside the community as well meaning thereby that the Offspring is identified with the mother's community and the father.

55. In the present facts, it would be seen that the Petitioner No.1 along with her brother were raised by the mother solely who admittedly belongs to the Scheduled Tribe Community since their ages at 6 and 2 when their father had expired. The Vigilance Report does not in any manner state that the Petitioner No.1 along with her brother were living with their paternal grandparents. On the other hand, the report categorically mentions that both the children of the Petitioner No.2 have been raised by the Petitioner No.2. Under such circumstances, the first condition of the test laid down in the case of ***Rameshbhai Dabhai Naika (supra)*** is met.

56. Let this Court now take up the second criteria to be satisfied. In the earlier segments of this judgment, this Court had extensively dealt with deprivation, discrimination, indignities, humiliations and handicaps faced by the backward/disadvantaged class. This Court had dealt with the socio-cultural disadvantages faced by the citizens belonging to the disadvantaged/backward classes which is on account of the inequalities and deprivations faced by them since centuries. Therefore, the deprivation and discrimination felt, the indignities and humiliation faced and the handicaps on account thereof are ingrained in the characteristics of backward/disadvantaged classes. In the said backdrop, if a child as in the instant case is brought up in such an

environment and community which had already suffered and is suffering the deprivations, humiliations, indignities and handicaps, the child would automatically be enduring the deprivation, humiliations, indignations and handicaps.

To substantiate the above proposition, let this Court take the reverse analogy. What would be the status of a child born to a Scheduled Tribe father and a forward class mother where the father expired when the children were six and two respectively and the mother had raised and is raising the children in a forward class environment. In such a situation, the children would have an advantage being brought up in a forward caste environment wherein the deprivation, humiliations, indignities and handicaps are not felt. Apart from that, the children would also not face any socio cultural disadvantage. Under such circumstances, if the children are granted Scheduled Tribe status merely being born of a Scheduled Tribe father, it would result in rendering the constitutional scheme of substantive equality redundant inasmuch as the special treatment which is meant to be for the upliftment of the backward class as a homogeneous group would become redundant.

In this regard, let this Court take another example of a case where an orphan is raised by a Scheduled Tribe father alone or a Scheduled Tribe mother alone or even by a couple who are Scheduled Tribes from a very tender age in the atmosphere and community of a Scheduled Tribe. Can it be said that the orphan would not be entitled to claim

reservations or special treatment on account of his/her ancestry being unknown. In the opinion of this Court, the said orphan would be entitled to the benefits and special treatment belonging to the Scheduled Tribe as he/she had been raised and brought up in a Scheduled Tribe environment and community which had already suffered and is suffering deprivations, humiliations, indignities and handicaps. The above basis can also be seen at paragraph Nos. 19 and 20 of the judgment of the learned Full Bench of the Kerala High Court in the case of ***M.C. Valsala (supra)*** and paragraph No.48 of ***Rameshbhai Dabhai Naika (supra)*** which have been quoted hereinabove.

Therefore, the above analysis would show two very pertinent aspects. First, when a child is brought up in an environment and community of a Scheduled Caste/Scheduled Tribe, from a tender age the very nurturing and raising of the child in such environment and community would ingrain upon the child, the characteristics of a Scheduled Caste/Scheduled Tribe as observed by the Supreme Court at paragraph No.779 in the case of ***Indra Swahney (supra)***. Secondly, a child having been brought up in an environment of a forward caste would have the advantage to reap the benefits of the economic and socio cultural advantages which the forward class of citizens have been enjoying and enjoy.

57. Moving forward, a question arises as to whether the Petitioner No.1 along with her brother had any advantageous start in life being born in

a family where the father belonged to the Other Backward Classes and not Scheduled Tribe. The answer has to be negative in the present facts inasmuch as at the very nascent age of 6 and 2 respectively, they have been only under the custody and care of the mother. It is also pertinent to note that if the children of the Petitioner No.2 were not brought up in an environment of their father, then in what type of environment the children were brought up inasmuch as the children have to be brought up in some environment. The Petitioner No.2 admittedly have been raising the children on her own. The natural corollary therefore is that the children were brought up in an environment of a community of her mother who belongs to Scheduled Tribe community.

58. In the backdrop of the above analysis, it is pertinent to note why the Supreme Court in the case of ***Rameshbhai Dabhai Naika (supra)*** had mentioned the requirement for proving the deprivations, indignities, humiliations and handicaps by the offspring of a forward caste father and a Scheduled Tribe mother. It would be seen from the analysis of the Supreme Court in the case of ***Rameshbhai Dabhai Naika (supra)*** that the conclusion so reached therein were on the basis of the ratios laid down by the various judgments. The Supreme Court dealt with the judgment in the case of ***Valsamma Paul (supra)*** and ***Anjan Kumar (supra)*** wherein the ratio laid down were when the persons concerned therein had an advantageous start in their life being born and brought up in a forward caste environment and community, they did not have the occasion of suffering the

deprivation, humiliaties, indignities and handicaps which their counter parts belonging to the Scheduled Caste/Scheduled Tribe community faced. It is under such circumstances, the Supreme Court observed that being born to a forward caste father, the offspring had to prove that he/she did not have an advantageous start in life and suffered deprivations, humiliaties, indignities, and handicaps. It is pertinent herein to mention that the said criteria laid down which is required to be proved by the offsprings are safeguards towards misuse by offsprings born and brought up in forward caste environment and community and in order to claim special treatment and privileges claim the caste of the mother who is a Scheduled Tribe. At this stage, it is relevant to consider the submissions so made by the learned Senior counsel appearing on behalf of the Respondent No.8 as well as the stand taken by the SLSC. As per the submissions made by the learned Senior counsel for the purpose of getting benefits of special treatment and privileges, it is required that the offspring of a forward caste father and Scheduled Tribe mother has to prove that he/she had suffered deprivations, humiliaties, indignities and handicaps. In the opinion of this Court the said submission is misconceived and without understanding the true import of the ratio laid down by the Supreme Court in ***Rameshbhai Dabhai Naika (supra)*** inasmuch as the question of proving deprivation, indignities, humiliaties and handicaps would only arise when the offspring had the option of an advantageous start in life. In a case where the offspring did not have at all an advantageous start to his/her life or for that matter, did not have an option of having an advantageous start in their life, though born from

a forward caste father and Scheduled Tribe mother, the question of proving the deprivations, indignities, humiliations and handicaps do not arise inasmuch as such offspring having been raised and nurtured in a backward/disadvantaged class environment and community who have already suffered and is suffering the deprivations, indignities, humiliations and handicaps, the sufferings thereof shall automatically ingrain upon the offspring. The requirement therefore of proving actual deprivations, humiliations, indignities and handicaps does not arise in such circumstances. In other words, if there was no option of having an advantageous start in the life of the offspring, the question of proving the actual deprivations, humiliations, indignities and handicaps does not arise.

59. In the above backdrop, let this Court now take note of how the SLSC had considered the second criteria in passing the impugned order. It would be seen from a perusal of the impugned order that the SLSC did not at all consider the aspect as to what advantageous start the children of the Petitioner No.2 had when the husband of the Petitioner No.2 expired leaving the Petitioner No.1 and her brother who were merely six years and two years respectively. The SLSC dealt with the second criteria on the basis that the Petitioner herein failed to prove actual deprivations, indignities, humiliations and handicaps and as such in the opinion of this Court the decision of the SLSC was flawed on applying the improper yardstick.

60. Now let this Court take note of the third criteria which is required to be

proved. The third criteria was that the offspring was always treated as a member of the mother's community not only by the community of the mother but by people outside the community. In other words, the offspring is identified with his/her mother's community. At this stage, this Court finds it very pertinent to take note of the directions of the Supreme Court in the case of ***Kumari Madhuri Patil (supra)***. At paragraph No.13.4 of the said judgment, the Supreme Court mentioned that the State Government shall constitute a committee of three Officers. One of such Officer who was required to be a member of the said committee and more particularly in the case of Scheduled Tribe should have intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities. In terms with paragraph No. 13.5, there is a requirement that the Directorate should constitute a Vigilance Cell consisting of the Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social claim status. In the said paragraph itself, what the Inspector is required to do have been categorically mentioned. They are required to

(a) Go to the local place of residence and original place from which the applicant applying for grant of social status certificate hail and usually reside or in case of migration to the town or city, the place from which the applicant originally hail from.

(b) The Officer should personally verified and collect all the facts of the social status claimed by the applicant or the parent or guardian as

the case may be.

(c) The Inspector should also examine the school records, birth registration, if any.

(d) The Inspector should also examine the parent, guardian or candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the applicant.

(e) Submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the caste or tribe or tribal communities concerned.

61. In the backdrop of the above, if this Court takes note of the Vigilance Report, it would be seen that the Officer concerned while making the report had made various assumptions on certain conjectures and surmises. The report does not mention that the Officer concerned visited the native village of the Petitioner No.2. On the basis of certain information that the Petitioner No.2's father had during his lifetime migrated to Guwahati on account of his profession, it was assumed that the father of the Petitioner No.2 had only occasionally visited his native place. Taking into account the said, it was assumed by the Officer concerned that the Petitioner No.2 had little

links/communication with her native village. Had the Officer concerned visited the native village of the Petitioner No.2, he could have gathered better particulars as regards the Petitioner No.1 and her brother's links to the said native village.

In the earlier segments of the instant judgment and more particularly at paragraph No.38 hereinabove, this Court had dealt with the above aspects. Be that as it may, at the cost of repetition, the Scheduled Tribe to which the Petitioner No.2 belong has also a large chunk of population spread throughout the State of Assam including Guwahati. In fact, at Guwahati, there is an organization in the name and style of "All Guwahati Mising Kebang". The Vigilance Report duly refers to the said organization and the Secretary as well as the President of the said organization were also examined. At this stage, this Court finds it very pertinent to take note of the statements so given by the various persons who were examined and the details given in the Vigilance Report. The statement made by one Shri Aditya Kharilare, who is the General Secretary of the All Assam Tribal Sangha before the Inspector of Police, CID on 19.02.2021 as available in the records is relevant. The relevant portion of the said statement is reproduced herein under:

"Smti Leena Doley is single mother and she brought her children in a tribal society (Missing Community). She follows the Missing tradition and culture. The both daughter and son have been accepting by the All Guwahati Missing Kebang as one of the society being a Missing children as their mother Smti. Leena Doley is recognized on Schedule Tribes (Plain) of

Assam."

In the similar manner, Shri Karneswar Doley who is the President of the All Guwahati Missing Kebang had also given a statement to the Inspector of Police, CID, Assam on 18.02.2021. In addition to that, Shri Karneswar Doley had also issued a certificate on 15.07.2020. The relevant portion of the said certificate is quoted herein below:

"The upbringing of the two child as mentioned above were raised, educated and inculcated into them the cultural, traditions and ethos of the Miri/Mising community, a Scheduled Tribe of Assam, of which Mrs. Leena Doley is herself".

Additionally, it is also seen from the records that a senior member of Miri/Mising community of Guwahati, Shri Ranjit Kumar Doley had given a certificate on 17.07.2020. The relevant part of the said statement is extracted herein below:

"Mrs. Leena Doley has, as mentioned above, raised, educated and inculcated into her two children the culture, traditions and ethos of the Miri (Mising) community, a Scheduled Tribe of Assam, to which she herself belongs. It may also be noted that both children have words – Aappun and Aayang – belonging to the Miri (Mising) language included in their names."

62. A perusal of the Vigilance Report do not show that any further enquiry was made as to what culture, tradition and ethos were followed by the Mising community although the Enquiry Officer was obligated as per paragraph No.13.5 of the judgment in ***Kumari Madhuri Patil (supra)*** as discussed above. In fact, the Enquiry Officer while making

the report seemed to be more overwhelmed on the question as to whether the Petitioners have proved that the Petitioner No.1 and her brother had suffered deprivations, indignities, humiliations and handicaps. The said aspect is apparent from the fact that the Enquiry Officer in his report had mentioned that he had examined people in the locality where the Petitioners reside and only on the aspect as to whether the Petitioner No.1 and her brother had suffered deprivations, indignities, humiliations and handicaps. It is also very pertinent to observe that from the Vigilance Report as well as the materials available in the records which were produced, there is no mention about the persons who were examined in the locality where the Petitioners reside although when such proposition of facts form a part of the report, it is the requirement to record such statements and be brought within the ambit of the records. Be that as it may, as the query so made with the people of the locality wherein the Petitioners reside as to whether the Petitioner No.1 as well as her brother can be identified with the mother's community, the said Vigilance Report is far from being satisfactory.

63. Now let this Court take note of how the SLSC had dealt with this criteria. The SLSC had rejected the statements and certificates issued by the people belonging to the community of the Petitioner No.2 merely on the ground that the said statements do not mention as regards any tribal customs, way of life etc. of the children and the said statements do not show that the children had suffered disadvantages or disabilities due to their mother's status. It is the opinion of this

Court that the manner in which the SLSC had dealt with this criteria is totally contrary to the law laid down by the Supreme Court in ***Kumari Madhuri Patil (supra)*** for the reasons that it was the duty of the Enquiry Officer while submitting the Vigilance Report to mention as regards the peculiar anthropological and ethnological traits, rituals customs etc. which was not done by the Enquiry Officer. The statements and the certificates so issued as mentioned hereinabove, categorically mentioned that the Petitioner No.1 and her brother were brought up as per the 'Miri' customs, ethos and traditions. If the SLSC was not satisfied with the said certificates or statements and wanted something more, the SLSC was obligated as per the judgment in ***Kumari Madhuri Patil (supra)*** to make such enquiry either by themselves or through the Enquiry Officer. Even the SLSC could have put the said queries to the notice of the Petitioner No.2 so that the Petitioner No.2 could have substantiated the same. However, as would be seen from the narration of the facts hereinabove, the SLSC even did not think it relevant to place issue a Show Cause to the Petitioners herein on the basis of the Vigilance Report and also provide the Vigilance report to the Petitioners. Be that as it may, it is further pertinent to mention that the SLSC like the Enquiry Officer seemed to be more overwhelmed with the fact that the Petitioners failed to prove the deprivations, indignities, humiliations and handicaps.

64. This Court had also duly taken note of the statements made as well as the certificates so issued as referred to hereinabove. The same in the opinion of this Court would show that the Petitioner No.1 as well as her

brother were duly accepted into the community of their mother and were also identified by the people belonging to the community of their mother as belonging to the Mising community.

65. However, one aspect this Court finds it pertinent at this stage to observe from the materials on record as to whether the other people who do not belong to the Mising community also identify the Petitioner No.1 as well as her brother as belonging to the mother's community or father's community. The reasons for having no materials on record are two fold:

(a) The Enquiry Officer had adopted a wrong approach in making enquiry with the people of the locality of the Petitioners inasmuch as the people in the locality ought to have been enquired with as to whether they identified the Petitioner No.1 as well as her brother with her mother's community or father's community. However, this was not done.

(b) The Vigilance Report was made the basis by the SLSC in arriving at its opinion in respect to the instant criteria though the Vigilance report was silent as to whether the people in the locality identified the Petitioner No.1 as well as her brother with their mother's community or father's community. Had the Vigilance Report being furnished and a Show Cause notice been issued on the basis thereof asking the Petitioners to explain and prove, the said aspect could have been reflected adequately in the records for which this Court could have

dealt with the said aspect.

66. This Court further finds it relevant to take note of certain social media exchanges made by the Petitioner No.2 with certain people outside the community to which the learned Senior counsel for the Respondent No.8 emphasized during the course of his submissions. This Court had duly perused the said social media exchanges. The said social media exchanges in the opinion of this Court has no relevance in respect to the question as to whether the Petitioner No.1 or her brother is to be regarded as a Scheduled Tribe of Assam inasmuch as the Petitioner No.2's desire that her children should not take the benefits of special treatment/privileges afforded to Scheduled Tribes would not act as a waiver or estoppel against the rights of her children. Furthermore, it is also to be understood that though the Scheduled Tribes are provided with special treatment/privileges/ protection but then also the social stigma attached to a member of a Scheduled Tribe still continues.
67. Now let this Court take into account another aspect of the matter which also forms the basis for negating the claim for the Scheduled Tribe status to the Petitioner No.1 on the ground that the Petitioner No.2 being a Class-I Gazetted Officer of the Assam Police Service has been able to provide them education in reputed schools. In the opinion of this Court that the said basis is flawed inasmuch as the privilege that accrue to forward class are not only limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive exam but also include their social network

and cultural capital (communication skills, accent, books or academic accomplishment) that they inherit from their family. The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education on higher post which commensurate with family standings. Therefore, merely because of the fact that the children of the Petitioner No.2 are being provided good educational facilities cannot be a ground arrive at a finding that they have not suffered deprivation, humiliations, indignities and handicaps.

68. The above analysis therefore would show that the parameter so applied by the State Level Scrutiny Committee in passing the impugned order is flawed and suffers from complete non-application of mind.
69. In ***Navneet Kaur Harbhajansing Kundles (supra)*** the Supreme Court categorically observed that the High Court as well as the Supreme Court should refrain themselves from deeper probe into factual issues like an appellate body unless the interference made by the concerned authority suffers from perversity on the face of it or/are impermissible in the eyes of law.
70. In the backdrop of the above analysis and determination, it is the opinion of this Court that the yardsticks which were applied by the SLSC was contrary to the law laid down in ***Rameshbhai Dabhai Naika (supra)***. Apart from that, the manner in which the impugned order was passed also shows complete non-application of mind. The relevant aspect which ought to have been taken into consideration

were not taken by the SLSC and on the other hand, irrelevant factors were made the basis of the impugned order. Accordingly, this Court is of the unhesitant opinion that the impugned order is required to be interfered with.

71. Now let this Court take into decide as to whether the impugned order suffers from violation of principles of natural justice which is the first point for determination. In the foregoing paragraphs of the instant judgment, this Court has duly mentioned the manner in which a SLSC proceeded for deciding the dispute. It is not denied that the Petitioners herein were not furnished the Vigilance Report or the opinion of the Advocate General or the complaint so filed by the Respondent No.8 as well as also enquiry report dated 04.09.2020 by the Additional Deputy Commissioner, Kamrup (M). There is no denial to the fact that the above documents formed the basis of the impugned order.
72. At this stage, this Court finds it relevant to take note of Paragraph No.13.6 of the said judgment in the case of ***Kumari Madhuri Patil (supra)*** as the same has relevance for the purpose of deciding the point for determination in hand inasmuch as in the said paragraph it was categorically observed that if the Vigilance Report is against the claim for social status, it is the requirement that a show cause notice should be issued thereby supplying a copy of the report of the Vigilance Officer to the Applicant by registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed.

The manner in which the show cause notice thereupon has to be adjudicated is also spelt out.

73. In the instant case as have been specifically dealt with in paragraph No.10 hereinabove, it is clear that neither the Vigilance Report nor any Show Cause was issued. It is pertinent to observe that the SLSC exercises its jurisdiction on the basis of judicial dictum in ***Kumari Madhuri Patil (supra)*** and as such if there was no Show Cause notice along with the Vigilance Report issued and furnished to the Applicant, it has to be presumed that the said Vigilance Report was in favour of the claim for social status inasmuch as a reading of paragraph Nos. 13.6 and 13.7 of the said judgment, it is clear that it is only when the claim was not found to be genuine or doubtful or spurious or falsely or wrongly claimed, there would be a requirement of issuance of a Show Cause notice supplying a copy of the Vigilance Report. The same having not been done, it has therefore to be understood that the Vigilance Report was in favour of the Petitioner No.1 and as such there was no requirement for issuance of the Show Cause notice. The SLSC by not issuing of a Show Cause notice and supplying the Vigilance Report to the Petitioners have therefore created an impression in paragraphs 13.6 and 13.7 that the claim so made was genuine and rightfully made. However, the SLSC relied upon a Vigilance Report which was against the Petitioners and passed the impugned order. In the opinion of this Court, the manner in which the SLSC conducted the proceedings and passed the impugned order is not only in violation of the principles of natural justice but is also contrary

to the directions passed by the Supreme Court in the case of ***Kumari Madhuri Patil (supra)***.

74. Furthermore, it would also be seen from the records so produced that on 16.03.2021, there is an endorsement in the records that the report has been received. Thereupon, on 26.04.2021, there is a noting "*ask Smti. Leena Doley to attend hearing on 27.04.2021, Gaurav Upadhyay may be called later on*". Thereupon, on 27.04.2021, the Petitioner No.2 appeared and submitted her written statement. Pursuant thereto, on 25.06.2021, the Respondent No.8 was heard in absence of the Petitioner No.2. It is relevant to mention that on 25.06.2021, another supplementary objection was filed by the Respondent No.8 giving various other documents. Further to that, again on 28.06.2021, another written statement cum objection was submitted by the Respondent No.8. None of these were provided to the Petitioners.
75. The above facts would therefore show that the State Level Scrutiny Committee not only applied its mind in the proper perspective in applying the parameters but also the impugned order is in complete violation to the principles of natural justice inasmuch as various documents were taken on record which formed the basis of the impugned order without supplying copies to the Petitioner No.2. The hearing was conducted in absence of the Petitioner No.2 or her representatives. The manner in which the hearing was conducted appear to have been in a hush-hush manner. Under such circumstances, this Court has no other option but to hold it that the

impugned order bearing No.KAV TAD/BC/790/2020/213 dated 24.09.2021 cannot be sustained in law.

CONCLUSION:

76. The impugned order bearing No.KAV TAD/BC/790/2020/213 dated 24.09.2021 passed by the SLSC is set aside and quashed.
77. The Petitioners herein have been able to substantiate the following criteria laid down in ***Rameshbhai Dabhai Naika (supra)***.
 - (a) The Petitioners have been able to show and prove that the Petitioner No.1 and her brother have been under the care and custody of the Petitioner No.2.
 - (b) The Petitioners have been able to prove that the Petitioner No.1 as well as her brother did not get any advantageous start in their life being an offspring of an OBC father and a Scheduled Tribe mother.
 - (c) The Petitioner No.1 as well as her brother having been raised and nurtured since their age of six and two respectively in the community of the mother have automatically suffered the deprivations, indignities, humiliations and handicaps which the Petitioner No.2's community have suffered and is suffering till date.

(d) The Petitioners have been able to prove that the community of the Petitioner No.2 had accepted the Petitioner No.1 and her brother as members of the community of the Petitioner No.2. The community of the Petitioner No.2 have also identified the Petitioner No.1 as well as her brother as members of the Petitioner No.2's Missing community.

(e) The aspect as to whether the Petitioner No.1 as well as her brother have been accepted by the other people outside the community of the Petitioner No.2 as belonging to the ST community of the mother is not clear from the records. The reason being that the Enquiry Officer while submitting the Vigilance Report did not take into consideration the relevant aspects while purportedly making enquiry with the persons of locality wherein the Petitioner No.1 and her brother have been raised. It is also seen that had the Vigilance Report being furnished to the Petitioner No.2, she could have provided necessary evidence in respect to prove the said aspect as to whether the people other than the people of the community of the Petitioner No.2 have identified the Petitioner No.1 and her child as belonging to the Petitioner No.2's community.

78. This Court is therefore of the opinion that the matter requires to be remanded back to the SLSC to decide only on the aspect as to whether the people outside the community of the Petitioner No.2 have also identified the Petitioner No.1 as well as her brother as belonging to the

Petitioner No.2's community or that of their father's community.

79. This Court further grants liberty to the SLSC to call for another fresh report on the above aspect which have been directed to be considered i.e. whether the people outside the community of the Petitioner No.2 have also identified the Petitioner No.1 as well as her brother as belonging to the Petitioner No.2's community or that of their father's community. Upon such report being furnished and if such report goes against the petitioners, the Petitioners be issued a Show Cause notice along with the said report. It is further observed and directed that in the circumstance such Show Cause notice and report is furnished, the Petitioners herein would be at liberty to file a reply and also adduce such evidence as deem fit. The Petitioners also be afforded in such circumstances an opportunity of hearing.
80. The said exercise be completed by the SLSC within 45 days from the date a certified copy of the instant judgment is served upon the Chairman of the SLSC.
81. With above observations and directions, the instant writ petition stands disposed of.
82. The records which were produced hereby returned.

JUDGE

Comparing Assistant