

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
PUBLIC INTEREST LITIGATION NO.125 OF 2014

01 Maharashtra Adiwasi Mana Jamat  
Mitra Mandal, Nagpur,  
through its President,  
Bhagwan Vithuji Nannaware,  
age: 45 years, Occ: Associate  
Professor & Social Worker,  
R/o Plot No.4, Jaibhim Society,  
Chandramani Nagar, Nagpur-  
440 027.

02 Sau. Yashashree Deoram Nandanwar,  
age: 43 years, Occ: Assistant Teacher,  
Cooperator, Nagpur & Social Worker,  
R/o 37, Bhande Plot, Umrer Road,  
Nagpur 440 009.

Petitioners

Versus

01 The State of Maharashtra,  
through its Chief Secretary,  
Room No.518, 5<sup>th</sup> Floor, Main  
Building, Mantralaya,  
Mumbai – 400 032.

02 State of Maharashtra,  
Tribal Development Department,  
through its Principal Secretary,  
Mantralaya Extension,  
Mumbai 400 032.

03 Chairman,  
Scheduled Tribe Caste Certificate  
Scrutiny Committee,  
Nashik and The Commissioner  
and Director,  
Tribal Research & Training Institute,  
28, Queen's Garden, Pune 411 001.

04 The Scheduled Tribe Certificate  
Scrutiny Committee, Nashik,  
through its Member Secretary,  
Adiwasi Vikas Bhavan, Old Agra  
Road, Nashik 422 002.

05 Sub Divisional Magistrate,  
Sub Divisional Office,  
Sangamner,  
District Ahmednagar 422 602.

06 Madhukar Kashinath Pichad,  
R/o Rajur, Tq. Akole,  
District Ahmednagar 422 601.

Respondents

Mr.Nitin Meshram, advocate holding for Mr.S.C.Yeramwar,  
advocate for the petitioner.

Mr.V.A.Gangal, Senior Counsel i/by Mr.P.S.Patil, A.G.P. for  
Respondents No.1 to 5.

Mr.R.N.Dhorde, Senior Counsel i/by Mr.P.S.Dighe, advocate for  
Respondent No.6.

**CORAM : R.M.BORDE &**

**K.L.WADANE, JJ.**

**Reserved on : 28<sup>th</sup> June, 2016**

**Pronounced on : 27<sup>th</sup> September, 2016.**

**JUDGMENT (Per R.M.Borde, J.):**

1 Heard. Rule. Rule made returnable forthwith and  
heard finally by consent of learned Counsel for respective parties.

2 Petitioner No.1 is a registered Association claiming to  
be involved in social activities for development of the society and  
more particularly, for tribal community. According to petitioners,  
they are dedicated social workers engaged in the welfare activities

and working for protecting constitutional rights of the tribal communities. Petitioner No.1 has been authorized to present instant petition. Petitioner No.2 claims to be a social worker and is elected councillor of Municipal Corporation, Nagpur.

3           Petitioners are raising challenge to the validity certificate issued in favour of Respondent No.6 by the Scrutiny Committee validating caste/tribe certificate issued by the Sub Divisional Magistrate certifying that Respondent No.6 belongs to “Hindu Mahadeo Koli”, Scheduled Tribe.

4           Respondent No.6, at the relevant time, was Cabinet Minister for Tribal Development Department in the Council of Ministers of the Maharashtra State. Respondent No.6 represented Akole Constituency in Ahmednagar district as a Member of Legislative Assembly since 2000. However, it is informed that at present, he is neither an elected representative nor he is holding any Ministerial position. Respondent No.6 is in receipt of caste certificate issued by Sub Divisional Magistrate, Sangamner Division, District Ahmednagar, dated 09.08.1999. The caste certificate issued to Respondent No.6 records his caste/tribe as “Hindu Mahadeo Koli”. After election of Respondent No.6 as a Member of Legislative Assembly in the year 2001, caste/tribe certificate, issued in his favour, came to be referred to the Scrutiny Committee for verification. The Scrutiny Committee, in observance of the procedure prescribed under law, has validated the tribe certificate issued to Respondent No.6 and was pleased to issue validity certificate on 22.06.2001, declaring Respondent No.6 as belonging to “Hindu Mahadeo Koli”, Scheduled Tribe.

5           Petitioners contend that Respondent No.6, in fact, does not belong to a tribal community, apart from the fact that there is no tribe recognized as “Mahadeo Koli” Scheduled Tribe, recorded in the Presidential Order issued in the year 1950, as amended in 1976. Entry No.29, in the Ist Schedule, so far as it relates to Maharashtra Part IX, records name of the tribe as “Koli Mahadev” and not as “Mahadeo Koli”.

6           It is the contention of petitioners that the tribe certificate issued to Respondent No.6 by the competent authority mentioning the tribe as “Hindu Mahadeo Koli”, which has been validated by the Scrutiny Committee, shall have to be branded as an illegal document since there is no entry mentioned in the Constitutional Order describing the tribe as “Hindu Mahadeo Koli”. Petitioners, as such, pray to quash the caste/tribe certificate as well as validity certificate issued to Respondent No.6.

7           In an affidavit opposing the Public Interest Litigation presented by Respondent No.6, a preliminary objection is raised as regards maintainability of Public Interest Litigation at the instance of petitioners. It is contended that petitioners do not have any *locus standi* to raise objection to the validity certificate issued to Respondent No.6 by the Scrutiny Committee in observance of the procedure prescribed in that regard. The validity certificate has been issued in the year 2001 and belated challenge is raised to in so called public interest after about fourteen years. There is absolutely no public interest involved in raising challenge to the certificate issued to an individual after more than a decade.

According to Respondent No.6, only a person, who has suffered or suffers from legal injury, can challenge the act, action or order in the Court of law. There is no judicially enforceable right available for enforcement, as such, the Public Interest Litigation is not maintainable. The existence of such right is a condition precedent for invoking writ jurisdiction. Petitioners do not have any right to seek a direction to quash the certificate issued in favour of Respondent No.6.

8           It is further contended that petitioner no.1 claims to be an Association working for welfare of tribal communities. In fact, petitioner-association, which is Nagpur based, allegedly functions for protection of rights of Adiwasi Mana community, whereas, Respondent No.6 belongs to Mahadeo Koli, which caste is not found in Vidharbha region. The petition is presented *with mala fide* intention since the State of Maharashtra, while Respondent No.6 was holding the portfolio of Tribal Development Department, took a decision to present SLPs challenging the validity certificates issued in favour of Respondent No.2 and other persons, some of whom are related to office bearers of petitioner no.1. It is further contended that in Maharashtra, thousands of certificates have been issued to tribals belonging to “Mahadeo Koli” Scheduled Tribe, which entry is recorded at Sr.No.29 in the Constitutional Order, applicable to Maharashtra and such tribe certificates have been validated by the Scrutiny Committee until recent past. It is only in the year 2014, the Scrutiny Committee, in certain matters, noticed the inconsistency and passed orders directing invalidation of the caste/tribe certificates. Liberty has been granted by the Scrutiny Committee, in such of those matters, to respective

individuals, to secure proper caste/tribe certificate and furnish such certificate again for verification to the Scrutiny Committee.

9           It is pointed out that even in the landmark judgment of the Supreme Court in the matter of **Madhuri Patil Vs. Additional Commissioner, Tribal Development Department**, name of the tribe of the petitioner there in is recorded as “Mahadeo Koli”. There is no separate tribe named as Mahadeo Koli distinct from Koli Mahadev. It is also contended that the authoritative text dealing with anthropological perspectives of the tribal communities also records name of the tribal community as Mahadev Koli. The Gazette issued by the State of Maharashtra on 24.04.1985 also records description of the tribe as Mahadev Koli in the entry at Sr.No.23. Even otherwise, the course, as adopted by this Court while dealing with Writ Petition No.4536 of 2014, shall have to be adopted in the instant matter also.

10           It is contended by Respondent No.6, relying upon the judgment of the Supreme Court in the matter of **P. Seshadri Vs. S. Mangati Gopal Reddy and others**, reported in AIR 2011 SC 1883, that the parameters within which public interest litigation can be entertained by the Supreme Court and High Court have been laid down and reiterated in series of cases. By now, it ought to be plain and obvious that this Court (Supreme Court) does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies; having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard.

Otherwise the petition is liable to be dismissed at the threshold.

11 Respondent No.6 contends that instant PIL is hit by the principle of *res judica* since earlier petition presented by one Narayan before the principal seat at Bombay bearing W.P. No.8797 of 2009, objecting to the caste certificate and validity certificate issued to Respondent No.6 came to be dismissed on 08.02.2010. Instant petition, raising similar challenge, is not maintainable.

12 On perusal of the order passed by the Division Bench at Mumbai, it transpires that the petition presented by Narayan has been dismissed for the reason that the said petitioner does not have any locus to challenge validity certificate issued to Respondent No.6 herein. It is observed in the order that the Respondent therein (Respondent No.6 herein) is elected from Ahmednagar District for Maharashtra Legislative Assembly, whereas, petitioner hails from Pune. The Court has observed that petitioner therein appears to have been put up by somebody out of political rivalry. As such, the Court proceeded to dismiss the petition.

13 As regards preliminary objection raised by Respondent No.6, questioning *locus standi* of the petitioner, reliance is placed on the judgment in the matter of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors.**, reported in **AIR 2013 SC 58**. In para 7 of the judgment, the Hon'ble Supreme Court has recorded thus:

“7 It is a settled legal proposition that a

stranger cannot be meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is restored to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736 : (1996 AIR SCW3424); and Tamil Nadu Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors., (2009)2 SCC 784)."

14           Placing reliance on the observations of the Supreme Court recorded in para 12 of the judgment, it is contended that whenever any public interest is invoked, the Court shall examine the case to ensure that there is in fact a genuine public interest involved. The Court must maintain strict vigilance to ensure that there is no abuse of the process of court and that “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases where the subjective purpose of the *lis* justifies the need for it.

15           On the contrary, petitioner has invited our attention to observations made by the Supreme Court and relying upon the judgment in the matter of **Raju Ramsing Vasave Vs. Mahesh Deorao Bhivapurkar**, reported in (2008) 9 SCC 54, as quoted below:

20       In terms of the said provision, the Constitution (Scheduled Tribes) Order, 1950 was issued. The tribe “Halba” finds place in the said Order. “Koshti”, however, in the State of Maharashtra comes under “Special Backward Class”. Their occupation may be the same but it is well settled that before a person can obtain a declaration that he is a member of a Scheduled Tribe, he must be a member of a tribe. (See *Nityanand Sharma v. State of Bihar*.)

21       Parliament, it is trite, alone can amend the law and the schedule for the purpose of

including or excluding therefrom a tribe or tribal community or part of or group within the same in the State, district or region and the declaration made by Parliament is conclusive. For the said purpose, the court does not have any jurisdiction so as to enable it to substitute any caste and tribe.

22 It is not correct to contend that the Bombay High court in Milind Sharad Katware was not concerned with the question as to whether Halba-Koshti is a sub-tribe of Halba or Halbi. It in fact considered the said question in great depth. It referred to a large number of judgments. The doctrine of stare decisis was applied.

16           Petitioner has invited our attention to the observations made in para 36 of the judgment in the matter of **Shivajirao Nilangekar Patil Vs. Dr. Mahesh Madhav Gosavi & others**, reported in (1987) 1 Supreme Court Cases 227.

36 The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiner of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is

necessary and essential for the administration of justice.

17           Petitioners have also placed reliance on the judgment in the matter of **D.S. Nakara and others Vs. Union of India**, reported in **(1983) 1 Supreme Court Cases 305**. In para 64 of the judgment, the Hon'ble Supreme Court has recorded thus:

64   Locus standi of 3<sup>rd</sup> petitioner was questioned. Petitioner 3 is a Society registered under the Societies Registration Act of 1860. It is a non-political non-profit and voluntary organisation. Its members consist of public-spirited citizens who have taken up the cause of ventilating legitimate public problems. This Society received a large number of representations from old pensioners, individually unable to undertake the journey through labyrinths of legal judicial process, costly and protracted, and, therefore, approached petitioner 3 which espoused their cause. Objects for which the 3<sup>rd</sup> petitioner-Society was formed were not questioned. The majority decision of this Court in *S.P. Gupta v. Union of India* rules that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. Third petitioner seeks to enforce rights that may be available to a large number of old infirm retirees. Therefore, its locus standi is unquestionable. But it is a point of academic importance because locus standi of petitioners 1 and 2 was never questioned.

18           So far as contention raised by Respondent No.6 that

until recently, for number of years, thousands of certificates describing the tribe as Mahadev Koli have been issued and such of those certificates have been validated by the Scrutiny Committee. Not only this Court but the Supreme Court also approved validity certificates issued by the Scrutiny Committee in several matters or dealt with the matters wherein description of the tribe is recorded as Mahadev Koli. Since there is no separate tribe described as Mahadev Koli, different than Koli Mahadev, the established practice, which has been followed for number of years needs to be allowed and in respect of certificates which have attained finality, there is no need to take a different view.

19 Respondent No.6 also contends that the decision of the Division Bench in the matter of **Prakash S. Bhople Vs. State of Maharashtra**, reported in 2014 (4) MhLJ 890, shall operate prospectively.

20 In order to controvert the contentions raised by Respondent No.6, our attention is invited by petitioners to the decision of the Supreme Court in the matter of **State of Maharashtra Vs. Milind & others**, reported in (2001) 1 SCC 4, wherein the Supreme Court has laid down guidelines in respect of invoking and applying doctrine of stare decisis. The Supreme Court has observed in paragraphs 30 to 32 of the judgment, as quoted below:

30 The High Court to support its view that “Halba-Koshti” is included in “Halba” or “Halbi” Tribe relied on the following decisions of High Courts (1) Sonabai v. Lakhmibai

(decided by the Division Bench of the erstwhile Nagpur High Court); (2) Madhukar Dekate v. Dean of the Medical College, Nagpur; (3) Sunit Nana Umredkar v. Dr. V.G. Ranade; (4) Prabodh Parhate v. State of M.P.; (5) Abhya Shrawanji Parate v. State of Maharashtra – (a decision of the Division Bench of the Bombay High Court); (6) Kallpana Bhishikar v. Director of Social Welfare. In para 16 of the impugned judgment, the High Court has stated thus :

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

31 The High Court applied the doctrine of stare decisis on the grounds that the decisions referred to above were considered judgments; even the Government accepted their correctness in the courts; the State Government independently took the same view after repeated deliberations for a number of years; taking a contrary view would lead to chaos, absurd contradictions resulting in great public mischief. In our view, the High Court was again wrong in this regard. The learned Senior Counsel for Respondent 1 was not in a position to support this reasoning of

the High Court and rightly so in our opinion. Among the decisions listed above except the first two decisions, all other decisions were rendered subsequent to two Constitution Bench judgments (*supra*) of this Court. The first two judgments were delivered in 1956 and 1957. In this view, the High Court was not right in stating that the decisions were rendered during a long span of over 34 years by different Benches of different High Courts, consistently holding that “Halba-Koshti” is “Halba”. The rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything *ex facie* illegal, more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this Court, that too concerning the interpretation of the provisions of the Constitution. The remaining decisions were contrary to the law laid down by this Court. This Court in *Maktul v. Manbhari* adopted the statement of law found in *Halsbury and Corpus Juris Secundum* observed thus :

“But the supreme appellate court will not shirk from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake.” (From *Halsbury*)

“Previous decisions should not

be followed to the extent that grievous wrong may result; and, accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result.”

(From Corpus Juris Secundum)

The decisions relied on by the High Court to apply the doctrine of stare decisis, firstly, were not holding the field for a long time. Secondly, they are evidently contrary to the constitutional provisions. Thirdly, all the decisions rendered by the High Courts after 1965 were not consistent with the law laid down by this Court. Fourthly, if the view of the High Court is accepted, it will lead to absurd, unjust and ex facie illegal results running contrary to Article 341 and 342 of the Constitution. Fifthly, this Court in *State of Maharashtra v. Abhay* specifically had kept open the larger question whether “Halba-Koshti” is Halba. The High Court in the impugned judgment refers to this decision but only states that the said judgment shall govern the petitioner only. Sixthly, all the said decisions were not directly on the point relating to the Scheduled Tribes Order issued under Article 342 of the Constitution; some of the cases arose out of civil disputes involving adoption. Seventhly, even the State Government was not consistent in its stand touching the issue whether “Halba-Koshtis”

were “Halba/Halbis” to consider them as Scheduled Tribes. As early as on 20-7-1962 itself a circular was issued to the effect that “Halba-Koshtis” were not Scheduled Tribes. Further a look at the various circulars/resolutions/instructions/orders referred to in paras 20 to 22 of the impugned judgment, makes it clear that the controversy was not settled. Hence it cannot be said that the view “Halba-Koshtis” was “Halba/Halbi” Scheduled Tribe was holding the field for a long time. There arose no question of unsettling or upsetting the position in law which itself was not a settled one, till the first Constitution judgment in Basavalingappa case was delivered by this Court. Per contra, the impugned judgment runs contrary to the law clearly settled by the various judgments of this Court.

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

21 It is contended that even if longstanding practice is followed in respect of wrongly describing the tribe as Mahadev Koli, such practice cannot be approved, since it would be in breach of the entries recorded in the Constitutional Order.

22 It cannot be controverted that neither inquiry is permissible nor any evidence can be accepted to decide or declare that any tribe or tribal community or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned recorded in the Constitution (Scheduled Tribes) Order, 1950. The entries recorded in the Constitution (Scheduled Tribes) Order, 1950 must be read

as those are. The conclusions recorded in the judgment of the Supreme Court in the matter of **Milind** (supra), recorded in para 36, are quite eloquent and clear in this regard. Those are:

36 In the light of what is stated above, the following positions emerge;

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

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

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

4 It is not open to state Governments or courts or tribunals or any other authority to modify, amend

or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

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

23 In the matter of **E.V.Chinnaiah Vs. State of A.P. & others**, reported in (2005) 1 SCC 394, the question, that was posed before the Constitution Bench of the Supreme Court, was as to whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by subdividing the castes mentioned in the Presidential List into different groups. While dealing with the question, it is observed by the Supreme Court in paragraphs 20 and 21 of the judgment, thus:

20 We will now consider whether the Scheduled Castes List prepared by the President under Article 341(1) forms one class of homogeneous group or does it still continue to be a list consisting of different castes, sub-castes, tribes etc. We have earlier noticed the fact that the Constitution has provided for only one list of Scheduled Castes to be prepared by the President with a limited power of inclusion and exclusion by

Parliament. The Constitution intended that all the castes included in the said Schedule would be “deemed to be” one class of persons but arguments have been addressed to the contrary stating that in spite of the Presidential List these castes continue to hold their birthmark and remain to be separate and individual castes though put in one list by the President. It is the contention of the respondents that by merely including them in a list by the President these castes do not become a homogeneous group; therefore, to fulfill the constitutional obligation of providing an opportunity to these castes, more so to the weaker amongst them, it is permissible to make a classification within this class, as was made permissible in regard to Other Backward Classes (OBC) by this Court in *Indra Sawhney* case. We cannot accept this argument for more than one reason.

21 It cannot be denied that all the castes included in the Presidential List for a State are deemed to be Scheduled Castes, which mean they form a class by themselves.

24 The Division Bench of this Court, to which one of us (**R.M.Borde, J.**) was party, dealing with the same issue, as has been raised in the instant petition, has observed in paragraphs 8 to 10 of the judgment in the matter of **Prakash S. Bhople Vs. State of Maharashtra**, reported in 2014 (4) MhLJ 890, as quoted below:

8 It would be appropriate to refer to some of the judgments of the Supreme Court. In the matter of **Nityanand Sharma Vs. State of Bihar**, reported in 1996 (3) SCC 576, the question arose before the Supreme Court was, as regards power to declare a particular tribe to

be Scheduled Tribe under Scheduled Castes and Scheduled Tribes Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976. The question before the Supreme Court was, as to whether caste 'Lohara' recorded in the Hindi version of the Schedule for Bihar, recording the Entry as 'Lohar' can be accepted as referring to a Scheduled Tribe when the English version records the entry as 'Lohara'. The Supreme Court, dealing with the issue and answering the same in negative, has observed in paragraph no.15 of the judgment, thus:

“15 It is for Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste / tribe etc. It would thus be clear that for the purpose of the Constitution, “Scheduled Tribes” defined under Article 366 (25 as substituted (sic) under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent or finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe.

9 In **Palghat Jilla Thandan Samudhaya Samrakshna Samithi Vs. State of Kerala**, reported in 1994 (1) SCC 359, the question, that arose for consideration before the

Supreme Court, was as to whether the persons named or called Thandans in Malabar area were intended to be covered by 1976 Order. The Supreme Court, dealing with the issue, has observed in the aforesaid judgment that:

“..... It is not for the State Government or for this Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilise the report to, in effect, modify the Scheduled Castes Order. It is open to the State Government, if it so deems proper, to forward the report to the Appropriate Authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly.”

10                Similarly, in the matter of **State of Maharashtra Vs. Milind and others**, reported in (2001) 1 SCC 4, there were two questions taken up for consideration:

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

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

The Division Bench of this Court, in the matter, held that it was permissible to enquire as to whether the subdivision of a tribe was part and parcel of the tribe mentioned therein and that 'Halba-Koshti' is a subdivision of main tribe 'Halba / Halbi' as per Entry No.19 in the Scheduled Tribes Order applicable to Maharashtra. The State Government challenged the said decision of the High Court in the Supreme Court. The Constitution Bench in **Milind's** matter, referring to earlier Constitution Bench judgment of the Supreme Court in the matter of **B. Basavalingappa Vs. D. Munichinappa**, reported in AIR 1965 SC 1269 and in the matter of **Bhaiya Lal Vs. Harikishan Singh**, reported in AIR 1965 SC 1557. In paragraphs no.16 to 19, has observed thus:

16 In (*B. Basavalingappa v. D. Munichinnappa*) 3, A.I.R. 1965 S.C. 1269 : 1965(1) S.C.R. 316, a Constitution Bench of this Court has held thus:-

“It may be accepted that it is not open to make any modification in the order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order [see Aray (Mala) Dakkal (Dokkhalwar) etc.] Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A modified in the order. Ordinarily, therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets

after the Bhovi caste in the order.”  
(*emphasis supplied*)

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

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

in the Mysore State before the re-organisation of 1956. “

18 Again a Constitution Bench of this Court in a later decision in (Bhaiya Lal v. Harikishan Singh) 4, A.I.R.1965 S.C. 1557 : 1965(2) S.C.R. 877, did not accept the plea of the appellant that although he was not a chamar, as such he could claim the same status by reason of the fact that he belonged to Dohar caste which is sub-caste of Chamar. Even after referring to the case of Basavallingappa (supra) it was held that an enquiry of that kind would not be permissible in the light of the provisions contained in Article 341 of the Constitution. In that case the appellant's election was challenged *inter alia* on the ground that he belonged to the Dohar caste which was not recognized as a Scheduled Caste for the district in question and so his declaration that he belonged to the Chamar caste which was a Scheduled Caste was improper and was illegally accepted by the Returning Officer. The Election Tribunal declared that the election was invalid. On appeal the High Court confirmed the same. This Court also dismissed the appeal pointing out that the plea that the Dohar Caste is a sub-caste of the Chamar Caste, could not be entertained in view of the Constitution Scheduled Castes Order, 1950 issued by the President under Article 341 of the Constitution. It is also stated that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The notification referred to Chamar, Jatav or Mochi. The Court observed that the enquiry which the Election Tribunal could hold was whether or not the appellant is a Chamar, Jatav or Mochi and held thus:-

“The plea that though the appellant is not a

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

19 Referring to the case of **Basavalingappa** (*supra*) the Court explained thus:

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

25 In the matter of **Prakash Bhopale** (*supra*), while drawing conclusions, it is observed in paragraphs 15, 16 and 17 of

the judgment, as quoted below:

15 Further, in view of the judgment of the Supreme Court in the matter of **State of Maharashtra Vs. Milind and others** (*supra*), referred to above, it will have to be concluded that although the Scrutiny Committee has referred to the discrepancy appeared in recording description of the tribe in the certificates issued by the competent authorities, in past, thousands of certificates have been issued and the Scrutiny Committee has also validated such certificates referring to the tribe at Sr.No.29, in Scheduled Tribes Order, 1950, as 'Mahadev Koli'. In the judgment of **Madhuri Patil**, reference to the tribe, admittedly, is as 'Mahadev Koli'. It is not a matter of dispute that in past tribe certificates have been issued referring to the tribe as 'Mahadev Koli' and those certificates have been validated by the Scrutiny Committees after observing the procedure prescribed in the matter of Madhuri Patil as well as Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Namadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act (23 of 2001). The caste certificates and tribe certificates issued in past, after observing due procedure and in case of issuance of validity certificates, after holding vigilance cell inquiry as well as on consideration of affinity test, such certificates and validity certificates shall have to be treated as having been validly issued and shall be treated valid for all practicable purposes. In this context, reference can be made to a judgment of Division Bench of this Court in the matter of **Raju s/o Pundlikrao Burde Vs. Establishment Officer (III-B), Maharashtra State Electricity Board, Mumbai and another**, reported in 2003 (4) Mh.L.J. 780. The question before the Division

Bench was as regards authenticity and practicability of acting upon validity certificates issued after observing due procedure, prior to pronouncement of judgment in the matter of Madhuri Patil. Dealing with the question, the Division Bench has observed in paragraph no.9 of the judgment, thus:

“.....Having regard to the scheme of the Act and reading of section 4, sub-section (2), in the light of the said scheme, we are of the view that the said provision does not invalidate the caste certificates issued by the Competent Officer and/or an Authority, who was then competent to issue such a certificate. We do not find any deviation in the basic idea of issuance of caste certificate and their scrutiny at the hands of the caste scrutiny committee. Right since beginning the system has been that an authority after making a prima facie enquiry used to issue a caste certificate and, thereafter, the said caste certificate was sent for its verification and scrutiny to a responsible officer or authority, who was expected to make an independent enquiry and pronounce the caste status. Similar is the position which is reflected on reading of section 4, sub-section (2). A caste certificate is to be issued by competent authority and the caste certificate so issued is valid subject to verification and grant of validity certificate by the caste scrutiny committee. What has happened by passage of time is that one authority is replaced by other and one scrutiny committee is replaced by another scrutiny committee. To hold that the caste certificate issued or the decision rendered by the authorities, who were then competent, stands invalidated, would lead to absurdity besides multiplicity of litigation. Issues once concluded cannot be allowed to be reopened, otherwise the same would lead to unrest and turmoil. State of calm and repose would be replaced by uncertainty. All the reserve

category candidates who have obtained caste certificates and caste validity certificates over years, from the Competent Authorities then validly constituted, would be subjected to a de novo enquiries which could terminate in issuing conflicting and inconsistent orders.”

16 A reference can be made to a Full Bench judgment of this Court in the matter of **Shilpa Vishnu Thakur Vs. State of Maharashtra and others**, reported in 2009 (3) MhLJ 995, wherein there is a reference to article of Dr.Robin D. Tribhuwan on Anthropological Perspectives and more particularly to similarities between tribal and non tribals. It would be appropriate to reproduce the following table of tribal and non tribal communities.

| Tribal Communities                                         | Non-Tribal Communities                                                                        |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| 1 Mahadeo Koli, Tokre Koli, Malhar Koli                    | 1 Koli (including Son Koli, Suryawanshi Koli, Vaiti Koli, etc.                                |
| 2 Dhanwar                                                  | 2 Dhangar                                                                                     |
| 3 Thakur /Thakar, KaThakur /Ka Thakur Ma Thakur/ Ma Thakur | 3 Thakur (including Bhat, Brahmabhat, Thakur, Kshatriya Thakur, Rajput Thakur, Sindhi Thakur, |
| 4 Gond Gowari                                              |                                                                                               |
| 5 Mannerwarlu                                              |                                                                                               |
| 6                                                          |                                                                                               |

|             |                                                                                                                                              |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Halba/Halbi | Maratha<br>Thakur,<br>Pardeshi<br>Thakur);<br><br>4 Gowari<br><br>5Munnurwar<br>/Mannerwar<br>/ Mannarwar<br><br>6<br>Koshti/Halba<br>Koshti |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|

17 A reference is also made to the Government Resolution issued by the Tribal Development Department bearing No.CBC-1684/(309)/KA/11 dated 24.04.1985 and annexure thereto. The annexure records details of the Scheduled Tribes and its sub-tribes and other similar tribes which are likely to take benefits available to the tribes recorded in the schedule on the basis of similarity in the nomenclature. So far as tribe 'Koli Mahadev' is concerned, it is recorded at Sr.No.23 in the annexure and it is further recorded in the schedule, that "Mahadeo Koli" is one amongst the scheduled tribes in the State of Maharashtra mainly located in hilly areas of the State. The population figures of the said tribe, as per 1971 census was 3,39,855. It is recorded in column no.4 that other tribes and castes such as 'Koli', Suryawanshi Koli, Sonkoli and Christian Koli are the castes likely to take benefits on the ground of similarity in the nomenclature. The tribe 'Koli Mahadev', which is recorded at Sr.No.29 in the Schedule is referred to as "Mahadeo Koli" in the Government Resolution and annexure thereto. As has been stated earlier, it is a fact that all the while till this date, thousands of certificates

have been issued in favour of persons belonging to 'Koli Mahadev' category referring to their tribe as 'Mahadev Koli' and such certificates have been validated by the respective Scrutiny Committees and orders have been issued in favour of thousands of applicants. Neither the Scrutiny Committees nor the High Court, considering the matters, objected to reference of the tribe as 'Mahadev Koli' instead of 'Koli Mahadev'. As has been recorded earlier, it is an admitted position that there is no separate tribe or caste in the State of Maharashtra as 'Mahadev Koli'.

26           It is not a matter of dispute that Respondent No.6 has been issued caste/tribe certificate by the Sub Divisional Officer in the year 1999, which was referred for verification to the Scrutiny Committee after election of Respondent No.6 to Maharashtra Legislative Assembly in the year 2000 and the Scrutiny Committee has issued validity certificate in the year 2001. At the time of issuance of validity certificate, the Scrutiny Committee referred the matter to the Vigilance Cell. The Vigilance Cell, consisting of Research Officer, has submitted report favouring Respondent No.6 wherein it is recorded that ancestors of Respondent No.6 and Respondent No.6 are residents of the area, which is considered as a tribal belt having settlement of Koli Mahadev tribe. Respondent No.6 also satisfies the affinity test. He is conversant with the traits and characteristics peculiar to the tribal community and his close relations, including blood relations, are residing in the tribal area. It is also worth noticing that there are about seven blood relations of Respondent No.6 who have been issued validity certificates by the competent Scrutiny Committee from 2009 to 2011, certifying that they belong to Mahadev Koli or Koli Mahadev, Scheduled Tribe.

27 In view of these facts, in the instant matter also, the course that has been adopted by the Division Bench of this Court in the matter of **Prakash Bhople**, deserves to be adopted.

28 So far as instant petition is concerned, as recorded above, we have noted that petitioners do have *locus standi* to raise challenge. However, even if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the Court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the Court, then the Court may examine the issue and in exceptional circumstances, even if his *bona fides* are doubted, but the issue raised by him, in the opinion of the Court, requires consideration, the Court may proceed *suo motu*, in such respect.

29 In the instant matter, though it is pointed out that instant petition is not *bona fide* and petitioners or office bearers of petitioner no.1 have no reason to proceed against Respondent No.6, however, since the issue raised relates to breach noticed in issuing caste/tribe certificate and validity certificate contrary to the entry recorded in Constitutional Order, we deem it appropriate to entertain the petition.

30 For the reasons recorded above, the Public Interest Litigation deserves to be allowed and same is accordingly allowed. The caste/tribe certificate and the validity certificate issued to Respondent No.6 are quashed and set aside. Respondent No.6, may approach the Sub Divisional Officer for issuance of corrected

tribe certificate within a period of six weeks from today by tendering an application in the prescribed proforma together with original tribe certificate already in his possession. On receipt of the application together with original tribe certificate issued to Respondent No.6 earlier, the Sub Divisional Officer/Competent Authority shall issue corrected caste/tribe certificate recording name of the tribe as "Koli Mahadev" within a period of six weeks from the date of receipt of application. On receipt of the tribe certificate, Respondent No.6 may approach the concerned Scrutiny Committee with a proposal in prescribed proforma requesting the Scrutiny Committee to verify the tribe certificate and consider his proposal for issuance of validity certificate. Respondent No.6 may approach the Scrutiny Committee within a period of eight weeks from the date of receipt of the tribe certificate. On receipt of proposal from Respondent No.6, the Scrutiny Committee shall proceed to verify the tribe certificate and take appropriate decision after following the procedure prescribed in law, as expeditiously as possible, preferably within a period of one year from the date of receipt of proposal. The Scrutiny Committee shall accept the proposal directly and shall not refuse to accept it on any irrelevant ground. Until disposal of proposal for verification, no adverse action shall be taken against Respondent No.6 on the ground of passing of instant order quashing the caste/tribe certificate and validity certificate issued to Respondent No.6.

31 Rule is accordingly made absolute. There shall be no order as to costs.

**K.L.WADANE**  
**JUDGE**

**R.M.BORDE**  
**JUDGE**