IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

WRIT PETITION No.11286 of 2006 and 14742 of 2008

Between:

Nimmaka Jayaraju S/o. late Sowryappa,
Vanaja Village, G.M. Valasa Mandal,
Vizianagaram District.

.....Petitioner

and

The Hon'ble Chief Minister of A.P.,
Govt.of A.P., Secretariat Buildings,
Hyderabad and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED :17.10.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : Yes :

2. Whether the copies of judgment may be marked to Law Reporters/Journals : Yes :

3. Whether Their Lordship wish to see the fair Copy of the Judgment ? : Yes :

HON'BLE SRI JUSTICE P.NAVEEN RAO

+ WRIT PETITION NOs.11286 of 2006 and 14742 of 2008

%17.10.2016

WP No.11286 of 2006:

#Nimmaka Jayaraju S/o. late Sowryappa,
Vanaja Village, G.M. Valasa Mandal,
Vizianagaram District. .....Petitioner

Vs.

$ The Hon'ble Chief Minister of A.P.,
Govt.of A.P., Secretariat Buildings,
Hyderabad and others. .... Respondents

!Counsel for the petitioner : Sri A.Satya Prasad, senior counsel holding for Sri J.Satya Prasad, counsel on record for petitioner in WP No.11286 of 2006;

Sri D.V.Sitharam Murthy, senior Counsel holding for Sri Aka Venkata Ramana, counsel on record for Petitioner in WP No.14742 of 2008

Counsel for the Respondents: Govt.Pleader for General Administration for respondents 1 to 5;
Govt.Pleader for Home (AP) for respondent No.6;
Sri D.V.Sitarama Murthy, senior counsel Holding for Sri Taddi Nageshwar Rao, Counsel on record for respondent No.7 in WP No. 11286 of 2006;

Govt.Pleader for Revenue (AP for Respondents 1 and 2;
Special Govt.Pleader for G.P. for Social Welfare (AP for respondent No.3;
Sri B.Sashibhushan Rao, counsel for Respondent no.4 in WP No.14742 of 2008.

<Gist :

>Head Note:

? Cases referred:

(1999) 4 SCC 526; (2006) 1 SCC 212; AIR 1953 SC 210 (1); (1984) 2 SCC 404; 2016 SCC online 371; 1991 (4) SCC 406; 1998 (4) SCC 409; 2000 (1) SCC 666; AIR 1958 AP 724; AIR 1959 SC 1318; (1955) 1 SCR 158 : AIR 1954 SC 496 : 1954 Cri LJ 1333; (2005) 4 SCC 530 : 2005 SCC (Cri) 961; (1972) 2 SCC 442; (AIR 1989 SC 1019; (1920) 1 KB 773; (1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 LLJ 251; (1990) 3 SCC 447; (1997) 3 SCC 511; (2000) 2 SCC 69; (1981) 3 SCC 531; 1990 Supp SCC 785; (2003) 6 SCC 516.

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.11286 of 2006 and 14742 of 2008

COMMON ORDER:

Petitioner in W.P. 11286 of 2006 instituted this writ petition praying to direct the respondents to prosecute 7th respondent in accordance with the provisions of Andhra Pradesh (Scheduled Castes, Scheduled Tribes an Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short, 'Act, 1993'), and to recover the pay and allowances paid to him as Member of Parliament and as Member of Legislative Assembly in accordance with the relevant provisions contained in the Constitution of India and Representation of People Act, 1951. However, during the course of hearing, learned senior counsel fairly submitted that petitioner is not pressing the claim of recovery of pay and allowances during the tenure of 7th respondent as Member of Parliament.

2. Petitioner in W.P. No. 14742 of 2008 instituted this writ petition questioning the Endorsement issued by the 1st respondent in Rc.No.1220/2007L dated 15.12.2007 and seeking a consequential direction to the 1st respondent to consider the petitioner application for grant /renewal of Community Certificate as belonging to Konda Dora community as per the procedure prescribed under the Act 16 of 1993.

3. Heard learned Senior Counsel A.Satya Prasad, for petitioner, learned Senior Counsel Sri D.V.Sita Ram Murthy for 7th respondent, and learned Special Government Pleader for official

respondents. Parties are referred to as arrayed in W.P. No. 11286 of 2006.

4. Learned senior counsel Sri Satya Prasad contended that in view of the categorical finding recorded by this Court in Election Petition No.13 of 1999 holding that 7th respondent does not belong to Scheduled Tribe category and his election was set aside on that ground, which decision was affirmed by the Supreme Court, in accordance with the provisions contained in Act, 1993, criminal prosecution ought to have been launched against the 7th respondent. The inaction on the part of the State in not launching prosecution against 7th respondent in accordance with the provisions contained in Act, 1993, is *ex facie* illegal and amounts to arbitrary exercise of power.

4.1. Learned senior counsel has taken through the relevant provisions of the Constitution of India, provisions of Representation of People Act, 1951 (for short the Act, 1951), Act, 1993 and Rules 1997 made under Act, 1993. By relying on the provision in Articles 191 to 193 of the Constitution, which concerned Legislative Assembly of the State, he would submit that these provisions prescribed pre-qualifications required to a person to contest the election to State Legislature. Sections 4 and 5 of the Act, 1951 also stipulates the qualifications. This pre-qualification would equally apply to a person contesting election to a reserved category seat. No person is entitled to contest unless he fulfills the requisite qualifications prescribed there under. Thus, at the stage of contesting election, if a person

suffers ineligibility to contest, he would be deemed to be disqualified at that stage itself.

4.2. By referring to the disqualification provisions, he would submit that the provisions would clearly bring out that a person can suffer disqualification prior to participating in election, during the course of election and after election, as Member of Parliament/ Member of Legislative Assembly, as the case may be. A person, who suffered disqualification after election and while being a Member of Parliament/Member of Legislative Assembly, as the case may be, has to be visited with penal consequences. He would submit that no provision is made in the Constitution or in the Representation of People Act, to take penal action against a person, who earns disqualification even before participating in the election by suppressing true and correct facts. In the instant case, the disqualification is on account of clear suppression of his social status, obtaining Scheduled Tribe Certificate fraudulently and participating in the elections in the Constituency reserved for Scheduled Tribes. Since the disqualification suffered by the petitioner was on account of false social status claim, in terms of the provisions contained Section 11 of the Act, 1993 read with Rule 15 of the Rules 1997, penal action ought to have been taken against the 7th respondent.

4.3 He would further submit that 7th respondent impersonated and enjoyed public office, which actually meant for Scheduled Tribe category, thus, the pay and allowances paid to him as Member of Legislative Assembly is also required to be recovered from him in accordance with the provisions referred to above.

4.4. He would further submit that on account of categorical finding recorded by the High Court in Election Petition No.13 of 1999, as affirmed by the Supreme Court, the issue of disqualification even at the stage of contest has become final. He would further submit that the plea of the 7th respondent and their family members that Caste Certificate issued is not cancelled by following due procedure as envisaged in Act, 1993 and until the certificate is cancelled, he continues to retain the status of Scheduled Tribe and the declaration given by this Court in E.P.No.13 of 1999 concerned only with the election to the Legislative Assembly has no merit. The consequential action of cancellation of caste certificate is only a ministerial act and when declaration given by this Court has become final, he cannot be classified as a person belonging to Scheduled Tribe any more. All the benefits that were availed by such fraudulent claim have to be recovered, no further benefits can be granted and penal action has to be initiated.

4.5. He emphasized that certain Constituencies are exclusively reserved for under privileged groups in order to ensure that in the Indian Parliament and State Legislatures, there would be representation on their behalf and their grievances can be effectively projected. A person, who actually belongs to Scheduled Tribe, can alone put forth the grievance of the Scheduled Tribe people. The Naguru Constituency, reserved for Scheduled Tribes, is in agency area and the Scheduled Tribes are very poor, with low literacy rate and least exposed to the civil society. Only the Scheduled Tribe persons coming from that community can effectively project their grievances. The 7th respondent, though

hailed from the agency area, belongs to ruling class. He hails from royal family and enjoyed all the privileges within the agency area and outside. He is a Kshatriya, which is classified as forward class and cannot be declared as Konda Dora. His claim as Scheduled Tribe and seeking benefits of the Scheduled Tribe, amounts to depriving the legitimate claims of the Scheduled Tribes. Such kind of fraud should not be allowed to be perpetrated. He would submit that family members of the 7th respondent continuing to claim themselves as Scheduled Tribe and occupy public offices under the colour of Scheduled Tribe. 7th respondent and his family members are committing fraud on the Constitution.

4.6. Learned senior counsel has taken through the decision of this Court in Election Petition No.13 of 1999 and the judgment of the Supreme Court in Civil Appeal No.1102 of 2004.

4.7. In view of the judgment rendered in E.P. No. 13 of 1999, the 7th respondent is required to be subjected to prosecution under Section 11 (1) and (4) of the The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993) (for short the Act, 1993) as well as recovery of Pay and Allowances or Honorarium as Member of Legislative Assembly during the period 1999 to 2004.

4.8. He would submit that following are the salient factors to identify the caste, whether ST, SC or BC.

i) Place of birth and birth in a family.

ii) Anthropological history of the family.

iii) Endogamy

iv) Customs and practices either traditional or religion

v) Occupation

vi) Looking down and stigma attached to a caste in the society.

4.9. None of the above parameters are fulfilled by 7th respondent. The caste cannot be changed as it traces its roots by birth and same cannot vary as age progresses. The 7th respondent shown his caste as Kshtriya community by birth and as per his school records. In E.P.No.13 of 1999, this Hon'ble Court came to conclusion that he is not from Konda Dora community, in fact he is Kshtriya. Once an individual is born in a particular caste, the same applies throughout his life. In other words, the caste is born with an individual and dies along with him.

4.10. He would submit that the caste certificate issued under this Act is a permanent one under Rule 16 of the Rules 1997 and there is no different Caste Certificate for birth and education purposes or for local body elections and elections to the Legislatures. A caste certificate once issued would be the basis for making any claim or benefit at any time throughout the life time of the holder of the Certificate.

4.11. He would submit that the contention that each Election Petition raises a fresh cause of action is not valid in respect of determination of the caste. Once this Court held that 7th respondent does not belong to ST, the 7th respondent cannot be allowed to seek fresh Caste Certificate under the guise of fresh cause of action.

4.12. He would submit that fresh cause of action arises only in respect of the factual circumstances in which the election was fought or misconduct committed during the election or temporary disqualification suffered but so far as caste is concerned declaration given by this Court that 7th respondent is not a Scheduled Tribe would continue to operate by virtue of Article 215 of the Constitution of India. 7th respondent claim results in serious abuse of the process of law and against the judgment of Constitutional Court which is placed on a different pedestal under the Constitution of India. He would submit that State and its subordinates are required to comply and act in accordance with the judgments of the Constitutional Courts.

4.13. He would further submit that by close examination of the statutory provisions as well as the Rules, it is clear that a mechanism has been provided under the Act, 1993, where under the District Level Scrutiny Committee (DLSC) constituted under Rule 8 of the Rules, 1997 is required to conduct an enquiry in respect of claim of an individual for issuance of a Caste Certificate. The DLSC upon thorough enquiry by conducting an enquiry as per the procedure contemplated which is akin to the procedure provided under the Civil Procedure Code has to submit its report to the District Collector for passing the orders with regard to caste of the concerned individual. The District Collector, based on the recommendations, should either confirm or reject the claim of the applicant. The District Collector has no independent authority to defer with the recommendations of the Committee. The Collector's order for granting status of ST to the sister of the 7th respondent is contrary to the reports of the District level Scrutiny Committee.

The DLSC while making recommendation also taken into consideration the orders passed by this Hon'ble Court in E.P.No.13 of 1999. Contrary to said report, it appears, the Collector once-again sought for yet another opinion from the DLSC by his order dated 12.4.2010 and accordingly, the DLSC once again gave its report reiterating earlier view to cancel the Caste certificate issued by the Tahsildar, Parvathipuram in favour of Smt Nrusimha Priya Thatraj. The District Collector even after submitting two reports, once again ordered to examine the matter once again. Accordingly, DLSC again submitted its report reiterating the earlier view to cancel the Caste Certificate issued in favour of Smt Nrusimha Priya Thatraj. In spite of 3 reports negativing the claim of the sister of 7th respondent, the District Collector passed orders dated 9.7.2012 declaring the sister of the 7th respondent as belonging to Konda Dora Tribe i.e., belonging to ST category.

4.14. He would further submit that in E.P. NO. 10 of 2009, this Court in its orders dated 1.8.2012 set aside the election of Sri Janardhan Thatraj Veeravaram who is son of Smt Nrusimha Priya Thatraj.

4.15. He would further submit that the DLSC Report recommending the caste certificate given to Smt Nrusimha Priya Thatra (sister of 7th respondent) to be cancelled immediately and also to recommend action against the concerned as provided under Section 13 of Act, 16/1993.

4.16. He would submit that it is abundantly clear, there is any amount of abuse of process of law by the family members of 7th

respondent due to their influence in the society. This abuse is nothing but fraud on the Constitution of India.

4.17. He would submit that the petitioner herein preferred appeal before the Government against the orders passed by the Collector dated 9.7.2012 in favour of Smt Nrusimha Priya Thatraj, same is pending before the Government.

4.18. He would further submit that in the facts and circumstances apart from the legal position explained above, the State and its apparatus have not given due respect to the orders passed by this Hon'ble Court and consistently issuing Caste Certificates in favour of 7th respondent and his family members.

4.19. In support of his contentions, learned senior counsel placed reliance on the following decisions:

K.Venkatachalam v. **A.Swamickan and another[1]; Satrucharla Vijaya Rama Raju** v. **Nimmaka Jaya Raju and others[2]; Election Commission India** v. **Saka Venkata Rao[3]; Pashupati Nath Sukul and Ors. Vs. Nem Chandra Jain and Ors.[4]; 1962 SCC Online Madras, (Gangadharan case); Mohammad Sadique Vs Darbara Singh Guru [5]; Delhi Judicial Service Association, Tis Hazari Court Vs. State of Gujarat[6];**

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[1] (1999) 4 SCC 526

[2] (2006) 1 SCC 212

[3] AIR 1953 SC 210 (1)
[4] (1984) 2 SCC 404

[5] 2016 SCC online 371

[6] 1991 (4) SCC 406

Supreme Court Bar Association Vs. Union of India[7]; and **M.M.Thomos Vs. State of Kerala[8].**

5. Sri D.V.Sita Rama Murthy, learned senior counsel appearing for 7th respondent submitted that the writ petition is misconceived and the prayers in the writ petition cannot be granted. Decision in E.P.No.13 of 1999 is regarding invalidity to contest election to public office governed by the Act, 1951, and said decision has no bearing in invoking provisions of the Act, 1993.

5.1. He would further submit that the provisions of the Act, 1993 and Rules 1997 are not applicable to the case on hand as the aims and objectives and Section 3 of the Act, 1993 clearly states that the Act is confined only to seek public employment such as employment in Government Departments, Public Sector Undertakings and organizations or for admission into any educational institution or for the purpose of contesting for elective post in any local authority or in Cooperative Society, whereas 7th respondent was holding the elective post of Member of Legislative Assembly and does not fall under any of the above said categories covered under the Act, 1993.

5.2. He would further submit that statue has to be construed according to legislative intent as expressed in the enactment and the intent must be clear and explicit. Section 11 of the Act only refers to admission to educational institutions and appointment in government, local authority or in any company or corporation owned or controlled by the government or in any aided institution.

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[7] 1998 (4) SCC 409
[8] 2000(1) SCC 666

The term 'any other benefit' used in Section 11 necessarily refers to the benefits of the same genus and the context as of the enumerated ones. The doctrine of *'Noscitur a Sociis'*, which means that the meaning of the word is to be judged by the company it keeps and in the present case, the word ' any other benefit' is to be judged in the light of the specific class enumerated under the section. This Section does not deal with election to political offices on the basis of a false certificate. In fact Section 11 (4) which imposes penalty of imprisonment and fine excludes benefits mentioned in Section 12 which deals with appointment to elected political offices. Hence, the expression 'enjoys any other benefit' referred in section 11 (1) cannot include benefits relatable to appointment by election to political offices.

5.3. He would submit that prayer of the petitioner to apply penal provisions is not valid. It is fairly well settled that while construing penal provision, the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on the notion that there has been a slip, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. Sections 10, 11 and 12 of the Act, 1993 are penal provisions and are not attracted to the case in hand.

5.4. He would submit that the Act 16 of 1993 being a State Legislation cannot be extended to include the election to State Assembly and parliament merely because a social status certificate issued under the Act that a person belongs to SC, ST, BC can be used for the purpose of contesting reserved seat in Assembly or

Parliament. Article 193 of the Constitution only speaks of penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified. As per the said Article the penalty can be imposed only 'when he knows that he is not qualified or disqualified thereof'. In the instant case it cannot be said that the 7th respondent was aware that he was not qualified, inasmuch as he was issued a certificate as belonging to Konda Dora tribe by the Tahsildar, Parvathipuram in the year 1978 as per the procedure that was in vogue at that time. The 7th respondent successfully contested from Naguru ST Assembly constituency in the year 1967 and unsuccessfully contested in the year 1972. He was elected as MLA in the year 1978, 1983 and 1985 from Naguru ST Constituency. He contested as MP in the year 1989, 1991, 1996 and 1998 from Parvathipuram ST constituency. This Court dismissed E.P.No. 13 of 1983 when there was a challenge to his election to State Legislature against Scheduled Tribe reserved seat on the ground that he does not belong to Scheduled Tribe and declared him as belonging to Konda Dora, ST Community. His family was known as belonging to Hill Zamindari. Hence, Article 193 of the Constitution has no application to this case. The judgment in **K.Venkatachelam** has no application to the facts of the case. Similarly there is no provision for recovery of benefits under the Act, 1951. Hence, consequences not provided under the Constitution of India or the Act, 1951 cannot be read into Act 16 of 1993 for want of legislative competence.

5.5. It was illegal to reject the application of 7th respondent for issuing Caste Certificate based on the judgment in E.P. No. 13 of 1999. He would further submit as under:

i) The Ganzam and Viziagapatam Act (Act No XXIV of 1839) mentions Merangi as one of the Hill Zamindari exempted from the operation of rules of the administration of Civil and Criminal Justice. The family fo 7th respondent were the Zamindars of Merangi. In the Vizagaptam District Manual published in 1869, Chapter VII deals with ancient Zamindari families and estates. A brief account is given of each family and estate. Mearngi family is dealt as item XIII. The Gazette briefly mentions the origin of these estates etc.

ii) In Volume VI of the Celebrated Work of Edger Thurston published in the year 1909 titled ' Castes and Tribes of Southern India' at page 249 states that in Vizagpatam District Razus are recognized as belonging to two classes as Konda (hill), Bhu (plains) Razu. The Konda Razus are believed to be Hill Chiefs who have comparatively in recent times adopted the title of Razu. At page 248 it is stated ' it may be noted that some Konda Doras called themselves Rzau (Razu, Kapu or Reddys of Suryavamsham) of the Solar Race'.

iii) In O S 54 of 1976 filed by the brother in law of 7th respondent on the issue whether the plaintiff was exempt from paying Court fee, it was declared that he belonged to Konda Dora Caste and was entitled to exemption. Similarly, a vary close relative of 7th respondent's election was questioned in the year 1957 by late Sri V.V.Giri on the ground that Suri Dora was not a

Konda Dora but a Kshatriyaand failed to establish the same. The judgment of the Hon'ble High Court in Dippala Suri Dora Vs. V.V. Giri[9] which was confirmed by the Supreme Court in V.V. Giri Vs. Dippala Suri Dora[10].

iv) On the basis of the above material 7th respondent and his relatives were held to be Konda Dora ST. This was the undisputed position till the judgment dated 30.1.2004 in E.P. No. 13 of 1999. Thereafter solely on the basis of the observation and judgment in E.P. NO. 13 of 1999 relatives of 7th respondent were held not belonging to Konda Dora ST community.

5.6 In support of his contentions, he placed reliance on the following decisions:

i) Tolaram Relumal v. State of Bombay,[11]; **ii)Standard Chartered Bank v. Directorate of Enforcement**[12]**; iii) Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura**[13]**; iv) Siddeshwari Cotton Mills Vs. Union of India**[14]**; v).Attorney General Vs.Brown**[15]**; vii) State of Bombay v. Hospital Mazdoor Sabha**[16]**; viii) Rohit Pulp and Paper Mills Ltd. v. CCE**[17]; **ix) Mohd. Ali Khan v. CWT**[18]; **x)State of Maharashtra v. Nanded-Parbhani Z.L.B.M.V. Operator Sangh**[19]; **xi) Assessing Authority-cum-Excise and Taxation Officer v. East India**

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[9] AIR 1958 AP 724
[10] AIR 1959 SC 1318
[11] (1955) 1 SCR 158 : AIR 1954 SC 496 : 1954 Cri LJ 1333
[12] (2005) 4 SCC 530 : 2005 SCC (Cri) 961
[13] (1972) 2 SCC 442
[14] (AIR 1989 SC 1019
[15] (1920) 1 KB 773
[16] (1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 LLJ 251
[17] (1990) 3 SCC 447
[18] (1997) 3 SCC 511
[19] (2000) 2 SCC 69

Cotton Mfg. Co. Ltd[20]; **xii) Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests[21];** and **xiii) Union of India v. Rajiv Kumar[22].**

6. I have earnestly considered the rival submissions and the precedent decisions placed on record.

7. The points for consideration are :

1. Whether 7th respondent is entitled to issuance of Scheduled Tribe Caste Certificate?
2. Whether penalty as envisaged by Article 193 of the Constitution is attracted against 7th respondent ?
3. Whether a direction to take penal action under Act, 1993 can be ordered against 7th respondent?

I. ON SOCIAL STATUS CLAIM OF 7TH RESPONDENT:

8. Petitioner and 7th respondent contested to Nagur Assembly Constituency in the general elections held to the erstwhile State of Andhra Pradesh in the year 1999. The said Constituency was reserved to Scheduled Tribe category. The 7th respondent was elected. Challenging the election of 7th respondent, petitioner filed Election Petition No.13 of 1999 on the file of this Court. The principal contention urged by the petitioner was, 7th respondent does not belong to Scheduled Tribe category; that he produced false Caste Certificate claiming himself as Scheduled Tribe; that he does not belong to 'Konda Dora Tribe' as claimed by him, but he belongs to Kshatriya caste. He further claimed that the family

[20] (1981) 3 SCC 531
[21] 1990 Supp SCC 785
[22] (2003) 6 SCC 516

members of the 7th respondent have close relationship with all the Kshatriyas. The customs observed and practices followed by the family members of the 7th respondent are as Kshatriyas only and none of the customs or traditions followed by 'Konda Dora' were observed by the 7th respondent.

9. This Court in the judgment rendered on 13.01.2004 declared that the 7th respondent does not belong to Konda Dora Tribe and is not a Scheduled Tribe and that he secured false Caste Certificate to contest the election. The election of 7th respondent was set aside and he was disqualified to contest the election {reported in 2004 (4) ALT 14}. Aggrieved thereby, 7th respondent filed Civil Appeal No.1102 of 2004. Supreme Court, by judgment, dated 27.10.2005, confirmed the decision of this Court in Election Petition No.13 of 1999 **(Satrucharla Vijaya Rama Raju)**.

10. This Court extensively discussed the oral and documentary evidence placed on record in support of the contesting parties. This Court considered School records, Government records, customs of Konda Dora, vis-a-vis Hill Zamindari, recitals in Gazettes, The Ganzam and Vizagapatam Act, 1839 (Act No XXIV of 1839), Book on "Castes and Tribes of South India" written by 'Edger Thruston', and evidence given by 7th respondent in a suit. On elaborate consideration of the material on record, this Court recorded its findings in paragraph 98 and recorded conclusions in paragraph 100. It is useful to extract paragraphs 98 and 100 (More appropriate to this case are the conclusions 5,6,7,8,11,15,17, 22, 24 and 25). They read as under:

"**98**. With due regard to the judgment given by a Single Bench of this Court I reiterate that it was given in favour of the 1st respondent for want of sufficient evidence placed by the petitioner in the said election petition. But, in the light of the changed circumstances, the oral and documentary evidence adduced by the petitioner and the evidence given by the Revenue Inspector, Mandal Revenue Officer and the Revenue Divisional Officer regarding the perfunctory way in which they dealt with the matter in issuing the Caste Certificate to the first respondent, I am distinguishing the judgment of my learned predecessor. I further hold that in the light of the additional material placed by the petitioner and the changed circumstances and the non-existence of valid Caste Certificate issued by the competent authority I am constrained to differ with the view expressed by a Single Bench of this Court in E.P.No. 13 of 1983 and I have every reason to accept the plea of the petitioner and hold that the first respondent does not belong to Konda Dora Tribe, and the Caste Certificate issued by the R.D.O. is not valid. Consequently, I hold that the first respondent is not an eligible candidate to stand in the election of 1999 and his election as M.L.A. to the State Assembly is set aside as invalid.

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100. In the light of the above findings, I wish to sum up the factors that led this Court to come to a conclusion that the first respondent does not belong to Konda Dora Tribe:

(1) The genealogical tree of the family of R.1 not furnished describing the castes of his ancestors on paternal and maternal side.

(2) The place of birth of the ancestors of R.1 not mentioned.

(3) The birth certificates of any of the family members not produced.

(4) No material placed to prove that the family of R.1 suffered any indignation or humiliation in the hands of the society or upper castes.

(5) No documentary evidence placed by R.1 to prove that he belongs to Konda Dora Tribe,

(6) No mention in the Gazetteers that R.1's family belongs to Konda Dora Tribe.

(7) The Book of Edgar Thurstan and K. Rangachari on Castes and Tribes of South India, which was prepared on the basis of the Madras Census Report, 1891, does not disclose that Merangi Zamindar is a Konda Dora. On the other hand, Merangi Zamindar was described as Konda Raju.

(8) School records of R.1 or any of his family members not produced to prove that R.1's family belongs to Konda Dora Tribe.

(9) Ex.A.23-School Register entry of the paternal uncle's son of the first respondent shows their caste as Kshatriya.

(10) Registered documents covered by Exs.A.2 to A. 11 including those of pre-Constitutional period show the caste of R.1's family as Kshatriya.

(11) Ex.A.22-True copy of the Enquiry Report of the Commissioner of Tribal Welfare discloses that R.1's brother's son is not a Konda Dora and he is a Kshatriya.

(12) No marriage alliances of R.1's family with any other Konda Doras of the neighbouring areas.

(13) Marriage alliances only with people from Madhya Pradesh and Orissa States.

(14) No record produced to show that the in-laws of the family members of R.1 are Konda Doras.

(15) Important customs of R.1's family are distinct from the customs of other Konda Doras.

(16) Marriage alliances of R.1's family with other communities like Muka Dora, Manne Dora, Brahmins etc.

(17) Declaration of the caste of Sri L.N. Sanyasiraju, a Zamindar of Salur, who is a relation of R.1's family, as not a Konda Dora, but a Kshatriya.

(18) No ordinary Konda Dora was examined by R.1 except the Mokhasadars and Zamindars. R.Ws.2 to 4 are Mokhasadars, R.Ws.5, 6 and 8 are Hill Zamindars, R.W.9 is a Kshatriya.

(19) All Hill Zamindars are not Konda Doras and many of them are Konda Rajus.

(20) No other Konda Dora has a surname "Satrucharla".

(21) The record relating to issue of Caste Certificate in 1999 covered by Exs.Cl to C-10 is a concocted and manipulated one,

(22) Caste Certificate of R.1 is not valid as no enquiry was conducted as per rules and the procedure suggested by the Supreme Court.

(23) The files relating to issuing of Caste Certificates of R.1 for earlier elections not summoned.

(24) Konda Raju cannot be equated with Konda Dora Tribe.

(25) The file produced by the Revenue Divisional Officer, Parvathipuram at Page No. 153 discloses that they were issuing the Caste Certificate on the basis of the judgment of the High Court in E.P.No. 13 of 1983 without conducting any independent enquiry before issuance of the same."

11. On a challenge by 7th respondent against decision in E.P. 13 of 1999, on re-appreciation of evidence and pleadings, Supreme Court affirmed the decision of High Court.

12. The clear findings recorded by this Court in E P No. 13 of 1999 are staring at 7th respondent. It is clear from the observations of this Court in E.P. 13 of 1999 that no exercise was undertaken before issuing Caste Certificate based on which 7th respondent contested the elections in the constituency reserved for Scheduled Tribes. In view of the findings recorded by the Court, it is no more open to 7th respondent to rely on recitals in Gazette Publications and The Ganzam and Vizagapatam Act, 1839 or any other material which was already considered in E.P.No.13 of 1999.

13. At this stage, it is necessary to consider the decisions cited at the bar.

13.1. In paras 53 and 55 of E.P.No.13 of 1999, this Court held as under:

> "53. One clerk from RDO's Office produced a file said to be maintained in their office. Though a covering letter was enclosed to the said file mentioning that the file was produced from the Office of the RDO, the papers do not contain the initials, signatures, receive stamp or the inward number of the Office of the RDO on any of the papers covered by Exs.C.1 to C.10. The documents available in the file were got marked through the Revenue Inspector, who was examined as C.W.1. The application covered by Ex.C.1 does not contain the particulars of the Caste Certificates obtained by the first respondent on previous occasions. He did not enclose the School Certificate containing the caste. Except mentioning in Column No. 8 that he belongs to Konda Dora Scheduled Tribe, no other particulars relating to the land records, census records, information from the Social or Tribal Welfare Departments were filed along with Ex.C.1 application. The Revenue Inspector is supposed to verify the census records, birth records, and ration card etc., but all those columns were kept blank. The application form as well as the columns in the schedules is in the handwriting of C.W.1. The signatures of the first respondent on the application as well as the schedules are in different ink and the date under the signature was mentioned as 18-7-1999.
>
> .....

55. There are many complaints that some people who are in tribal areas or who belong to the neighbouring places of the scheduled areas are obtaining false certificates claiming themselves as Scheduled Tribes, therefore, the Government gave specific instructions to the concerned authorities who are issuing the social status certificates, more particularly relating to the Konda Dora Tribe, to make a thorough enquiry, to trace the origin of the said applicant, to satisfy that the family of the applicant was recognized as Konda Dora from times immemorial, that there is sufficient recorded evidence to show that they belong to Konda Dora Tribe, and then only to issue the certificates. But, unfortunately, in this case the Revenue ' Inspector who was examined as C.W.1 categorically conceded that the application for the social status certificate was not filled by the first respondent, that the blank papers were simply signed and sent to him directing to fill up those forms, that the VAO was asked to sign on it and later it was sent to the M.R.O. and the R.D.O for affixing their seal of approval unmindful of the mandatory requirement of the procedure to be followed as per the guidelines issued by the Government of India and the Supreme Court. It was also blurted out by C.W.1 that since the first respondent had shown him the judgment of the High Court in E.P. No. 13 of 1983 stating that the High Court recognized him as a Konda Dora, he had no option except to sign on those papers and prepare a certificate describing the first respondent as Konda Dora. The record produced by the concerned authorities is a clear indication that they fabricated those papers just before the date of production into Court by anti-dating them. The truth came out from the womb of falsehood on account of this Court noticing the correction of the date put by C.W.1 by correcting the year "03" as "99". Unless there is sufficient material to show that the Caste Certificate was issued after thorough enquiry and after following the procedure prescribed for issuing the certificate, it cannot be treated as a valid certificate.

Documentary evidence on behalf of the first respondent: nil.
Oral evidence on behalf of the first respondent:"

13.2. In **Delhi Judicial Service Assn.** Supreme Court delineated the scope of Articles 129 and 215. Supreme Court held,

"19. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". This expression is well recognised in juridical world. In Jowitt's *Dictionary of English Law*, "Court of Record" is defined as:

"A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority."

In Wharton's *Law Lexicon*, Court of Record is defined as:

"Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts — and these are not entrusted by law with any power to

fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."

In *Words and Phrases* (Permanent Edition Vol. 10 page 429) "Court of Record" is defined as under:

"Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned."

Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, page 319, states:

"Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record .... The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein."

.....

21. In India, the courts have followed the English practice in holding that a court of record has power of summarily punishing contempt of itself as well as of subordinate courts. In *Surendranath Banerjea* v. *Chief Justice and Judges of the High Court at Fort William in Bengal* [ILR 10 Cal 109 : 10 IA 171 : 4 Sar 474] , the High Court of Calcutta in 1883 convicted Surendranath Banerjea, who was Editor and Proprietor of weekly newspaper for contempt of court and sentenced him to imprisonment for two months for publishing libel reflecting upon a Judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that the High Courts in Indian Presidencies were superior courts of record, and the powers of the High Court as superior courts in India are the same as in England. The Privy Council further held that by common law every court of record was the sole and exclusive judge of what amounts to a contempt of court. In *Sukhdev Singh Sodhi case* [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] this Court considered the origin, history and development of the concept of inherent jurisdiction of a court of record in India. The Court after considering Privy Council and High Courts' decisions held that the High Court being a court of record has inherent power to punish for contempt of subordinate courts. The Court further held that even after the codification of the law of contempt in India the High Court's jurisdiction as a court of record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.

13.3. In **Supreme Court Bar Assn.,** Supreme Court once again explained scope of Articles 129 and 215. Supreme Court held:

"11. The expression *court of record* has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.

12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.

13. According to Jowitt's *Dictionary of English Law*, First Edn. (p. 526) a court of record has been defined as:

"A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."

14. *Wharton's Law Lexicon* explains a court of record as:

"Record, courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question. Courts of record are of two classes — superior and inferior. Superior courts of record include the House of Lords, the Judicial Committee, the court of appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts, and other are inferior courts of record, of which the County Courts are the most important. *Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in facie curiae.*" (emphasis provided)

13.4. Again in **M.M. Thomas,** Supreme Court explained scope of Article 215 as under:

"14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In *Naresh Shridhar Mirajkar* v. *State of Maharashtra* [AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

14. The findings recorded in E.P.No.13 of 1999 are binding on 7th respondent. These findings cannot be ignored by the competent authority also while processing application for issuance of Caste Certificate under Act, 1993. It is thus no more open to 7th respondent to place reliance on earlier Caste Certificate and the decision in E.P.No.13 of 1983. In view of categorical findings recorded by this Court in E.P.No.13 of 1999, it cannot be said that the competent authority erred in refusing to issue certificate holding 7th respondent as belonging to Konda Dora and ST. In the light of findings recorded by this Court, burden lies heavily on 7th respondent to produce unflinching evidence, which was not considered by this Court in E.P.No.13 of 1999, in support of his claim of social status as ST. Since, apparently, no new material, which was not considered by this Court in E.P.No.13 of 1999 was placed before the competent authority, it cannot be said that competent authority erred in refusing to issue caste certificate as sought by him. I do not see any illegality in relying on the decision of this Court in E.P.No.13 of 1999, in rejecting the claim of 7th respondent.

15. 7th respondent cannot rely on social status certificate granted to his family members, more so, when clear findings are recorded against his claim by this Court. This Court is not inclined to go into the validity of the certificate granted to sister of 7th respondent, though elaborate submissions are made by Mr A.Satyaprasad, since as stated by him, appeal against the grant of ST certificate to her, preferred by petitioner, is pending before the Appellate Authority and said person is not a party to these writ petitions.

II. ON INVOKING ARTICLE 193 OF CONSITUTION OF INDIA:

16. 7th respondent was granted ST Certificate in the year 1978. His election to the State Legislature in the 1983 elections against ST reserved constituency was challenged in EP NO. 13 of 1983 on the ground that 7th respondent does not belong to ST. E.P. 13 of 1983 was dismissed holding that no material was placed to declare that 7th respondent does not belong to ST. In E.P. 13 of 1999 this view was reversed and this Court held that 7th respondent does not belong to Konda Dora caste and the caste certificate issued to him was not valid. 7th respondent contested the election to State Legislative Assembly in the year 1999 in the seat reserved for Scheduled Tribes claiming as Scheduled Tribe. His election is set aside by this Court in E.P.No.13 of 1999. Question for consideration is, whether these facts would necessitate invoking Article 193 of the Constitution.

17. At this stage, it is necessary to have a look at Articles 191 and 193 of the Constitution and the relevant provisions of the Act, Act, 1951. They read as under:

17.1.1. **Article 191. (Disqualifications for Membership)**

> (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—
> (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
>
> (b) if he is of unsound mind and stands so declared by a competent court;
>
> (c) if he is an undischarged insolvent;
>
> (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.

1—For the purposes of this clause], a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

.....

17.1.2. **Article 193.**

"If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State."

17.2. Sections 3 to 6 of The Representation of the People Act, 1951 reads as under:

17.2.1. **Section 3. Qualification for membership of the Council of States.—**

A person shall not be qualified to be chosen as a representative of any State 5* * * or Union territory in the Council of States unless he is an elector for a Parliamentary constituency 6[in India].

17.2.2. **Section 4. Qualifications for membership of the House of the People**

A person shall not be qualified to be chosen to fill a seat in the House of the People [1] [***] unless -

(a) in the case of a seal reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(b) in the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of the Slate or of any other State (excluding the tribal

areas of Assam), and is an elector for any Parliamentary constituency;

(c) in the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district; [2] [***]

[3] [(cc) in the case of the seat reserved for the Scheduled Tribes in the Union territory of [4] [Lakshadweep], he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of that Union territory;[5] [***]]

[6] [(ccc) in the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;]

(d) in the case of any other seat, he is an elector for any Parliamentary constituency.

17.2.3. **Section 5. Qualifications for membership of a Legislative Assembly.—**

A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—
(*a*) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;
(*b*) in the case of a seat reserved for an autonomous district of Assam, 1* * * he is a member of a 2[ScheduledTribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and
(*c*) in the case of any other seat, he is an elector for any Assembly constituency in that State:
3[Provided that for the period referred to in clause (*2*) of article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.]

17.2.4. **Section 6. Qualification for membership of a Legislative Council.—**

(*1*) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.
(*2*) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor 1* * * unless he is ordinarily resident in the State.

17.3. Chapter III of the Constitution deals with State Legislature. Every State shall have legislature, with one or two houses, Legislative Assembly and Legislative Council (Art.168). Legislative Assembly comprises of members chosen by direct election from territorial constituencies (Art. 169) and ordinarily, the duration of Legislative Assembly is five years (Art.172) Article 173 prescribes qualification for membership of the State Legislature. Article 188 prescribes oath or affirmation to be taken by elected members before participating in the Assembly sessions. Article 191 prescribes disqualification for membership. As per clause 1(e) of this Article, a person would be disqualified if so disqualified by or under any law made by Parliament. If a person is disqualified, Article 193 imposes penalty of Rs.500/- per sitting or voting in the legislature.

18. Part II of Chapter II of Act, 1951 deals with qualification for membership of State Legislature. Section 5 prescribe that a person is not qualified to be chosen to fill a seat in the legislative assembly of a State unless he is a member of Schedule Tribe if the seat is reserved for Schedule Tribes. This would mean that a person earns disqualification to contest election to the State legislative assembly against a seat reserved for Schedule Tribe if he is not a member of Schedule Tribe.

19. Article 193 has two limbs. First limb of this Article deals with a situation where member of legislature sits or votes in the Assembly even before he complies with mandate of Article 188; Second limb has three contingencies. It deals with a situation, (i) where member knows that he is not qualified; (ii) that he is

disqualified as member; and (iii) prohibited by the provisions of the Act of Parliament and State Legislature, but sits or votes as a member of legislature. In all the four contingencies, Article 193 mandates levying of penalty at the rate of Rs.500/- for each day on which he sits or votes. This amount is to be recovered as debt due to the State. There is no ambiguity in the scope of application of penal provision.

20. To the case on hand, second contingency of second limb of the Article 193 is attracted i.e., disqualified as member. As noticed above, 7th respondent was disqualified as member of State Legislative Assembly in E.P.No.13 of 1999. Such disqualification goes to the root of his election. According to Section 5 of Act, 1951, a person is disqualified to contest against a seat reserved for Scheduled Tribes if such person is not a scheduled Tribe. In E.P.No.13 of 1999, this Court has recorded categorical finding that 7th respondent is not a Scheduled Tribe. He was thus disqualified. Once a member of legislative assembly is disqualified, in terms of Article 193, he is liable to pay penalty at the rate of Rs.500/- per day of sitting or voting.

20.1. In **K.Venkatachalam,** Madras High Court declared K.venkatachalam was not qualified to sit as a Member of Legislative Assembly in Tamil Nadu as he did not pass the basic qualifications prescribed in clause (c) of Article 173 read with Section 5 of the Act, 1951. On considering the precedent decisions and on thorough analysis of relevant provisions of the constitution and Act, 1951, Supreme Court held as under:

"25. In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a Member from that constituency. How could a person who is not an elector from that constituency represent the constituency? He lacked the basic qualification under clause (*c*) of Article 173 of the Constitution read with Section 5 of the Act which mandated that a person to be elected from an Assembly constituency has to be an elector of that constituency. The appellant in the present case is certainly disqualified for being a Member of the Legislative Assembly of Tamil Nadu. His election, however, was not challenged by filing an election petition under Section 81 of the Act. The appellant knows he is disqualified. Yet he sits and votes as a Member of the Legislative Assembly. He is liable to penalty of five hundred rupees in respect of each day on which he so sits or votes and that penalty is recoverable as a debt due to the State. There has not been any adjudication under the Act and there is no other provision of the Constitution as to how penalty so incurred by the appellant has to be recovered as a debt due to the State. The appellant is liable to penalty nevertheless as he knows he is not qualified for membership of the Legislative Assembly and yet he acts contrary to law.

26. The question that arises for consideration is if in such circumstances the High Court cannot exercise its jurisdiction under Article 226 of the Constitution declaring that the appellant is not qualified to be a Member of Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. From the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as "Venkatachalam, s/o Pethu" taking advantage of the fact that such a person bears his first name. The appellant would be even criminally liable as he filed his nomination on an affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be a fraud on the Constitution.

27. ..... Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one the bar of Article 329(*b*) will not come into play when the case falls under Articles 191 and 193 and the whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?

28. We are, therefore, of the view that the High Court rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislative Assembly with consequent restraint order on him from functioning as a Member of the Legislative Assembly. "

20.2. In **Election Commission of India**, Supreme Court held that Article 193(3) is wide enough to apply after a person is elected as a member. Paragraph 14 reads as under:

> "14. .....Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and Article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms ***wide enough to cover both pre-existing and supervening disqualifications;*** but it does not necessarily follow that Articles 190(3) and 192(1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain. In our opinion these two articles go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words "becomes subject" in Article 190(3) and "has become subject" in Article 192(1) indicate a *change in the position* of the member *after* he was elected, but the provision that his seat is to become *thereupon* vacant, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the article contemplates only a sitting member incurring the disability while so sitting." (emphasis supplied)

21. On an interactive analysis of relevant provisions referred to above, I am of the opinion that levy of penalty per force comes into effect, the movement one of the conditions of Article 193 are fulfilled, without anything more. If a member of legislature is disqualified as member but before such disqualification he attends to Legislative Assembly meetings and/or participates in voting penalty at the rate of Rs.500/- is leviable on him. No discretion is vested in the Speaker in this regard. What is required to be done by the legislative secretariat is ministerial act of identifying number of sittings/voting held, quantify the amount leviable and to notify the same. Thereafter process of recovery sets in motion. This contingency does not require fulfillment of *mense rea* as a condition precedent to its application. Since 7th respondent is disqualified, penalty as contemplated under Article 193 is attracted

and he is liable to pay the penalty for sitting or voting in the Legislative Assembly after his election in the year 1999.

III. INITIATION OF PENAL PROVISIONS OF ACT, 1993:

22.1. Extensive debate took place on the scope of application of penal provisions of the Act, 1993. On the one hand, learned senior counsel Sri A Satya Prasad asserted that on account of the conduct of 7th respondent in falsely claiming himself as a person belonging to ST- Konda Dora and enjoying public offices, being elected from constituency reserved to ST, he is liable to be prosecuted under Act, 1993. He submitted that Section 11 is attracted to the case on hand whereas authorities failed to exercise the powers under the Act to proceed against 7th respondent. On the contrary, categorical assertion of the learned senior counsel Sri D V Sita Rama Murthy was that provisions of Act, 1993 per-se and more particularly provisions of Section 11 are attracted only when employment or admission to educational institutions was secured on false caste certificate. He would therefore emphasis that Act, 1993 is not attracted in case of election to legislative assembly. To buttress his contention he also referred to the statement of objects and reasons for bringing about Act 16 of 1993.

21.2. The rival contentions are heavily focused on second limb of Section 11. According to Sri Satya Prasad, it is within the scope of Section 11 to initiate prosecution against 7th respondent for making false claim of ST status, contesting the elections and enjoying the fruits of public office illegally in accordance with second limb of Section 11. On the contrary, Sri D.V.Sitarama Murthy would submit that the doctrine of *'Noscitur a Sociis'* applies

to this case, which means that the meaning of the word is to be judged by the company it keeps and in the present case, the word ' any other benefit' is to be judged in the light of the specific classes enumerated under the section. He would further submit that it is fairly well settled that while construing penal provision, the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on the notion that there has been a slip, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. Hence, consequences not provided under the Constitution of India or the Act, 1951 cannot be read into Act 16 of 1993 for want of legislative competence.

23. To appreciate these contentions, it is appropriate to consider the scope of Sections 3, 11 and 12 of Act, 1993. They read as under:

23.1. **Section 3. Application a Community Certificate:-**

(1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under clause (4) Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.

(2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, Make an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

Explanation: For the purposes of this Section and Section 13, "Scheduled Areas" means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution.

23.2. **Section 11 - Benefits secured on the basis of false community certificate to be withdrawn:-**

(1) whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward classes secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes or secures any appointment in the Government, local authority in any other company or corporation owned or controlled by the Government or in any aided institution against a post reserved for such Castes, Tribes or Classes or enjoys any other benefit intended exclusively for such Castes, Tribes or Classes, by producing a false Community Certificate shall, on cancellation of the false Community Certificate, be liable to be debarred from the concerned educational institution or as the case may be discharged from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.

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

(3) Any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.

(4) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures any benefit reserved for Scheduled Castes, Scheduled Tribes or Backward Classes other than those mentioned in section 12 by producing a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with lint which shall not be less than one thousand rupees but which may extend upto five thousand rupees :

Provided that the court may, for adequate and special reasons to be mentioned in the Judgement, impose a sentence of imprisonment for a lesser term or fine.

23.3. **Section 12 - Penalty for securing an appointment of election to political offices etc, on the basis of false community certificates:-**

(1) whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures an appointment in Government or other institutions referred to in section 11 against the posts reserved for the Scheduled Castes, Scheduled Tribes or Backward Classes or is elected to any of the elective offices of any local authority or co-operative society against the offices reserved for such Castes, Tribes or Classes on the basis of a false community certificate, shall on conviction be punishable with rigorous imprisonment for a term which shall-not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees :

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgement, impose a sentence of imprisonment for a lesser term or fine.

> (2) Whoever not being a person belonging to a Scheduled Tribe secures any benefit or protection intended for a member of a Scheduled Tribe under a notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any other law in force in the Scheduled Areas on the basis of a fale community certificate shall, on conviction be punishable with rigorous imprisonment for a term which shall not be six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees.

24. Act, 1993 is a beneficial social legislation. It is an enactment brought out to regulate all aspects of Caste Certificates. The Act deals with procedure to issue caste certificates and also envisages penal action to the persons who falsely claim social status as BC/SC/ST as well as officials responsible for issuing such false certificates.

25. To appreciate the rival contentions, it is necessary to have a brief look at the statement of objects and reasons for bringing about this Act. Second paragraph of the statement of objects and reasons would point out that this Act is brought out to curb the false claims for employment and admission to educational institutions by persons who do not belong to the reserved categories but claim the benefits earmarked to them. Legislature recognizes that on account of such false claims the very object of providing reservation to SC/ST/BC is not fulfilled and undeserving persons are knocking away those benefits.

26. Section 11 has two limbs. First limb deals with securing employment/admission in Government service, in the service of local authority or in any other company or corporation owned or controlled by the State, in aided institutions or securing admission to educational institutions; second limb talks about enjoyment of any other benefits intended exclusively for reserved categories by

securing false caste certificate. This Section envisages withdrawal of those benefits gained by the persons who made false claim of social status, cancellation of the degrees/diplomas granted to him; recovery of amounts paid to him as an employee and on conviction is also liable for rigorous imprisonment .

26. Section 12 deals with penalty for securing appointment or election to any of the elective offices in local authority or cooperative society against the office reserved for such castes, tribes or classes on the basis of false community certificate and on conviction is also liable for rigorous imprisonment.

28. Section 3(1) is more elaborate. It prescribes why an application for issuance of caste certificate can be made. Sections 11 and 12 correspondingly deal with contingencies mentioned in Section 3(1) on taking penal action for claiming such benefits illegally by a person not entitled to claim. On the contrary, Section 3(2) is more elaborate and concerns only Scheduled Tribes. As per this provision, a Scheduled Tribe can apply for a Caste Certificate to avail any other benefit in addition to contingencies mentioned in Section 3 (1). No provision is made in Section 11 to invite penal consequences for making false claims under Section 3(2).

29. At this stage, a brief parade of precedents cited at the Bar is necessary.

29.1. On application of penal provisions, in **Tolaram Relumal** and in **Standard Chartered Bank**, Supreme Court held that strict construction is required and Court must lean towards construction

which exempts the subject from penalty, if provision is not clear or specific.

29.1.1. In **Tolaram Relumal**, Supreme Court held:

> ***" .... It is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature***. As pointed out by Lord Macmillan in *London and North Eastern Railway Co.* v. *Berriman* [1946 AC 278, 295] "where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficient its intention, beyond the fair and ordinary meaning of its language" (paragraph 8)."

29.1.2. In **Standard Chartered Bank** Supreme Court held that :

> **"...**.If there is any ambiguity or doubt as to whether in a given case an offence is made out or not or about who can be an offender with respect to the given offence, the ambiguity is to be resolved in favour of the person charged. In *Maxwell on the Interpretation of Statutes*, 12th Edn., the rule is stated as under:
>
> "*Strict construction of words setting out the elements of an offence.*—If there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged. This is, in practice, by far the most important instance of the strict construction of penal statutes." (paragraph 42).

29.2. **Amar Chandra Chakraborthy, Siddeshwari Cotton Mills, State of Bombay** and **Rohit Pulp and Paper Mills** deal with maxims *'ejusdem generis'* and '*noscitur a sociis*'.

29.2.1. In **Amar Chandra Chakraborty** Supreme Court held that the doctrine of 'ejusdem generis' applies when (*i*) the statute contains an enumeration of specific words; (*ii*) the subjects of the enumeration constitute a class or category; (*iii*) that class or

category is not exhausted by the enumeration; (*iv*) the general term follows the enumeration and (*v*) there is no indication of a different legislative intent.

29.2.2. In **State of Bombay** Supreme Court explained scope of application of maxims *Ejusdem Generis* and *noscuntur a sociis*".

> "This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in *Words and Phrases* (Vol. XIV, p. 207): "Associated words take their meaning from one another under the doctrine of *noscuntur a sociis* the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*." In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscuntur a sociis*". The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscuntur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. ***It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied.*** It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. (emphasis supplied)

29.2.3. Again in **Rohit Pulp and Paper Mills Ltd.,** Supreme Court dealt with the maxim *noscitur a sociis* as under*:*

> 13**.** The maxim of *noscitur a sociis* has been described by Diplock, C.J. as a "treacherous one unless one knows the *societas* to which the *socii* belong" (vide *Letang* v. *Cooper* [(1965) 1 QB 232 : (1964) 2 All ER 929]). The learned Solicitor General also warns that one should not be carried away by labels and Latin maxims when the words to be interpreted is clear and has a wide meaning. ***We entirely agree that these maxims and precedents are not to be mechanically applied; they are of assistance only insofar as they furnish guidance by compendiously summing up principles based on rules of common sense and logic.*** As explained in *CCE* v. *Parle Exports (P) Ltd.* [(1989) 1 SCC 345, 357 : 1989 SCC (Tax) 84] and *Tata Oil Mills Co. Ltd.* v. *CCE* [(1989) 4 SCC 541, 545-46 : 1990 SCC (Tax) 22] ***in interpreting the scope of any***

notification, the court has first to keep in mind the object and purpose of the notification. All parts of it should be read harmoniously in aid of, and not in derogation of, that purpose."

29.3. In **Siddeshwari Cotton Mills** Supreme Court held "term 'any other process' preceded by processes specifically enumerated in a statute necessarily refers to process(es) of the same genus as of the enumerated ones".

30. Guided by the above principles, if these three provisions are read carefully, it would make it clear that penal action under the Act, 1993 is intended when employment, education and election to offices of local authority or cooperative society is secured by false claim of social status. Thus, Act does not deal with penal consequences of a person being elected to State legislature against a seat reserved for Scheduled Tribes. In view of the statement of objects and reasons for bringing about Act 16 of 1993 and on harmonious reading of provisions in Sections 3, 11 and 12, words used in Section 11, *"enjoys any other benefit intended exclusively for such castes, tribes or classes" and "any other benefit enjoyed by him as aforesaid"* have to be understood in the context of securing benefits of employment or admission to educational institutions or election to local body/society obtained in the above manner. Contrary intention of the legislature is not discernible on a plain reading of these provisions. What is sought to be invoked is a penal provision. When provision is not expressly pointing out taking penal action against a person contesting election to Legislative Assembly and on a close reading, all relevant provisions point out otherwise, by applying the process of reasoning, it

cannot be held that penal provision in Section 11 is also attracted to cases of this nature.

31. Though what is contended by Sri A.Satya Prasad is laudable and if a person found making false claim as Scheduled Tribe and contest the election successfully in a Constituency reserved for Scheduled Tribe, reaps benefits to which he is not entitled, penal action ought to be taken, it is for the concerned legislative wing of the State to make appropriate provision. The Court can only interpret/apply law made by the legislature. Court cannot stretch the meaning to penal provision when intention of the legislature is not clear and when there is doubt or ambiguity Court has to lean in favour of holding inapplicability of penal provision.

32. It is also to be noted that the Act, 1951 is a Central enactment which occupies the field with reference to election to State legislature and all matters related thereto. Act, 1951 is a self contained code on all aspects concerning election to State Legislature including conducting of elections, disputes regarding election, corrupt practices and electoral offences, powers of election Commission and disqualification. Part II of the Act deals with qualification and disqualification. Chapter II and III of Part VII deal with electoral offences. This chapter prescribes various disqualifications. Disqualification on conviction for certain offences (Section 8); disqualification on the ground of corrupt practices (Section 8-A); disqualification for dismissal from employment for corruption or disloyalty (Section 9); disqualification for Government contracts, etc (Section 9-A); disqualification for office under

Government company (Section 10); disqualification for failure to lodge account of election expenses (Section 10-A).

33. The provisions of Act 1951 do not envisage any penal action on the allegation of producing false caste certificate at the time of contest to the State legislature, except causing disqualification and losing the seat, if elected.

34. Article 191 of the Constitution of India deals with disqualification for membership to the State legislative assembly and legislative council. Clause 1 (e) of this Article provides that a person shall be disqualified if he is so disqualified by or any law made by Parliament. Provision in Article 191(1)(e) read with Section 5 of Act 1951 would make it clear that person earns disqualification being chosen as a member of legislative assembly if he is not a member of Scheduled Tribe and seat is reserved for Schedule Tribes. This Article only deals with disqualification. Article 193 of the Constitution of India prescribes penalty for sitting and voting. As analysed above, Article 193 is attracted if a member of the legislative assembly sits or votes though he is disqualified for membership of the legislative assembly. Thus, the relevant provisions of the Constitution and Act, 1951 only envisage imposition of penalty in case person earns disqualification as a member. No other penal consequence is envisaged by Constitution and Act, 1951. As noticed above, Act, 1993 is intended to deal with false community certificates being generated and used to secure admission to educational institutions or to public employment or to contest elections to local authorities/societies and consequences of making a false claim and utilizing false

certificates. On analysis of relevant provisions, it cannot be said that provisions of Act, 1993 gets extended to take penal action against securing elected post under the Act, 1951 reserved for Scheduled Tribes. Thus, provisions of Act, 1993 are not attracted to take penal course against 7th respondent.

35. When field is occupied by Act, 1951 and the Constitution of India and these provisions do not envisage any other penal action and in the light of the objects and reasons for bringing about Act, 1993 and provisions of Sections 3, 11 and 12 of Act, 1951, scope of Act, 1993 cannot be expanded and widened to authorize penal action on a Member of Legislative Assembly disqualified on the ground of securing false caste certificate. Thus, the prayer to direct authorities to prosecute 7th respondent cannot under Section 11 of Act, 1993 be granted.

36. In the result, points I and II are answered in favour of petitioner and against 7th respondent and Point III is answered in favour of 7th respondent and against petitioner. Writ Petition No.11286 of 2006 is partly allowed and Writ Petition No.14742 of 2008 is dismissed.

Miscellaneous petitions if any pending shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 17.10.2016
Kkm/tvk

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.11286 of 2006 & 14742 of 2008

Date: 17.10.2016

Kkm/tvk