

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2017

Pronounced on :21.09.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.20432 of 2004

Lakshminarayanan

.. Petitioner

Vs.

Union of India, rep. By
Government of Pondicherry rep. By
Deputy Collector (Rev.) South,
Pondicherry.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the order dated 15.06.2004 passed by the respondent in No.376/DCRS/Cert./B4/2004 and quash the same.

For Petitioner

: Ms.Usha Raman

For Respondent

: Mr.Syed Mustafa
Special Government Pleader

For Mr.Gandhirajan
Government Advocate

ORDER**M.VENUGOPAL, J.**

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the order in Ref.No.376/DCRS/Cert./B4/2004 dated 15.06.2004 passed by the Respondent and to quash the same.

2.Summation of Writ Facts:

2.1. The Petitioner belongs to Hindu Adi Dravida Community which is a Scheduled Caste. He was born in Pondicherry on 16.11.1980 (vide Birth Certificate dated 08.05.1998). He had his school education in Pondicherry.

2.2. The stand of the Petitioner is that his father was a Statistical Inspector in the Government of Pondicherry and he died in the year 2000. His mother is also a Government Servant working in the Government of Pondicherry. After completing his Higher Secondary Education, his father applied to the authorities seeking issuance of Community Certificate.

2.3. The prime plea taken on behalf of the Petitioner is that his father was a resident of Pondicherry even before the year 1964 and therefore, he is entitled to be considered as a person of Pondicherry Origin. The then concerned Revenue Authority, after conducting an enquiry in the matter, furnished a certificate, when he was a minor.

2.4. According to the Petitioner, the aforesaid certificate was issued on 20.05.1998. His date of birth is 16.11.1980. As a matter of fact, the authorities had issued further certificates on 25.07.2000 and 07.06.2002, resting on the earlier certificate issued on 20.05.1998. After joining B.Tech course during the year 1998 and after completing the said course, he joined in M.Tech course and he is studying second year of that course.

2.5. Since the Petitioner obtained more marks than the daughter of Veerabathrasamy, a Powerful Leader of Pondicherry Origin, gave a false complaint against him. As a matter of fact, the Revenue Authorities, without conducting a proper enquiry into the matter, had cancelled his Nativity Certificate by means of an order

dated 15.06.2004. In December, 2003 his semester examinations were conducted and at that point of time, he was called upon to take part in the enquiry. His father expired on 23.04.2000 and therefore, he was unable to establish the residence of his father prior to the year 1964. He sought time to take part in the enquiry, but was required to come to an enquiry. Even though he prayed for further time before the authorities, the authorities ultimately came to an unilateral conclusion and proceeded to pass the impugned order, in and by which, the Deputy Collector (Rev.) South, Government of Pondicherry issued a Proceedings dated 15.06.2004, whereby and whereunder, he had cancelled the Certificate No.4195/B/DTB/20000 dated 25.07.2000 and 3426 dated 07.06.2002 issued by the Deputy Tahsildar, Sub Taluk Office, Bahour, opining that the Petitioner was not eligible for SC (Origin) status under the Constitution (Pondicherry) Scheduled Castes Order, 1964, and could be treated only as 'SC Migrant'.

Petitioner's Contentions:

3.Assailing the validity, legality and correctness of the impugned order of cancellation of Community Certificate dated 15.06.2004 passed by the Deputy Collector (Rev.) South,

Government of Pondicherry, the Learned Counsel for the Petitioner submits that the Petitioner was not furnished with the copy of the Enquiry Report given by the Deputy Tahsildar, Sub Taluk Office, Bahour and in fact, the Respondent had not adhered to the 'Principles of Natural Justice' by not furnishing the Report of the Deputy Tahsildar, Sub Taluk Office, Bahour and also not obtained his explanation.

4.The Learned Counsel for the Petitioner strenuously contends that the Petitioner's father was a resident of Pondicherry even prior to the year 1964 and that the Respondent had observed that the Petitioner's father is a native of Periakattupalayam, which is a enclave surrounded by Pondicherry on all sides. Therefore, it is projected on the side of the Petitioner that there is every possibility that his father is a resident of Pondicherry, where his brother has been working. That apart, the Petitioner's father joined the Government service in Pondicherry in 1971.

5.The Learned Counsel for the Petitioner projects an argument that the certificate was issued during the year 1998 by the Revenue Authority only after due verification made with the Village Administrative Officer and the Revenue Inspector

concerned.

6.The Learned Counsel for the Petitioner proceeds to bring it to the notice of this Court that during May 1998 when the certificate was issued in favour of the Petitioner, he was a minor and his father had let in enough evidence to secure the certificate.

7.Lastly, it is the contention of the Learned Counsel for the Petitioner that the Respondent had relied on the 'Report of Discreet Enquiry'. In reality, 'A Discreet Enquiry' is not an enquiry at all. As such, placing reliance upon the 'Discreet Enquiry Report' by the Respondent is an illegal one.

8.Petitioner's Citations:

(i) The Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in ***Punit Rai V. Dinesh Chaudhary, (2003) 8 Supreme Court Cases 204 at special page 205 & 206***, wherein it is observed as under:

"The case of the parties is clear from their pleadings and the evidence adduced by them. The appellant election

petitioner challenged the status of the respondent as a person belonging to the SC community. In support of that case it was indicated that the respondent's father B is a Kurmi by caste married to J, also a Kurmi. A person born in a Kurmi family, of which details have been provided, would normally be taken to be a Kurmi by caste. But it is only in special circumstances, as may have been provided under a circular of the Government of Bihar, that the caste of the mother would be taken as the caste of the children, if she happens to be a Scheduled Caste, married to a non-Scheduled Caste. In this background the initial burden of the petitioner would stand discharged and it would shift upon the respondent to prove his case which, in normal course of things, would be and is within his special knowledge. A case which has been set up by the respondent through his witnesses as well, that his father had taken a fancy for D who is Pasi by caste and married her, who gave birth to the respondent, would normally be not in

the knowledge of the people in general, particularly when according to the case of the respondent himself J lived in another village and she was never brought from there by B. The respondent well understood the relevance and weight of the evidence of B and D, who were cited as witnesses in the list of his witnesses but they have been withheld and not produced before the Court. The respondent has not indicated any reason for non-production of the best evidence to prove the facts within the special knowledge of the respondent viz., B and D as witnesses. The respondent was under duty to prove his case both ways, namely, in view of the special knowledge of facts pleaded and again in view of the fact that the appellant had discharged his initial burden of showing that the respondent was Kurmi by caste being the son of B, Kurmi married to J also a Kurmi. These facts clearly make out a case for drawing an adverse inference that in case they had been produced they would not have supported the case

of the respondent. The evidence of brother of D that B had married D, was relevant under Section 50 of the Evidence Act for the purposes of relationship of one person to another since the brother of D is a person who is a member of the family or otherwise has special means of knowledge of the particular relationship. But his evidence would not be of any help, in view of the adverse inference drawn under Section 114III. (g) of the Evidence Act due to withholding of the best evidence available on the point. When the persons concerned are not coming forward to the Court to depose about the alleged relationship and an adverse inference has been drawn that if they had come to the Court to depose, their evidence would have gone against the respondent, in such circumstances, there is no occasion to act upon the statement of the brother of D or other witnesses. (paras 14, 7 and 15)."

(ii) Also, in the aforesaid decision, at page 207 & 208, it is observed and held as follows:

"The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage. How the caste or tribe of the person is to be determined depends upon several factors including the customary laws. A person under the customary Hindu law would be inheriting his caste from his father. In this case, it is not denied or disputed that the respondent's father belonged to a "Kurmi" caste. He, was, therefore, not a member of the Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law. (Paras 27, 24 and 41)"

The question as to whether a person belongs to a particular caste or not has to be determined by the statutory authorities specified therefor. A person in fact not belonging to a Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on the Constitution. No court of

law can encourage commission of such fraud. (Paras 35 and 39)

For the purpose of determination of caste, the respondent could not have relied upon the circular letter dated 3-3-1978 in absence of any law. In any event, it has not been shown by the respondent as to what enquiry was made for determination of his caste. If he had taken part in some enquiry, he had special knowledge in respect thereof within the meaning of Section 106 of the Evidence Act. He, therefore, was bound to prove the same by bringing on record relevant evidence which was in his power or possession. If a special case is to be made out, the same has to be done in accordance with law. It must meet the legal requirement. (Paras 47 and 48)". सत्यमेव जयते

(iii) The Learned Counsel for the Petitioner relies on the Division Bench Judgment of this Court reported in **1999 (III) CTC 441 at page 442 [A.Selvaraj V. State of Tamil Nadu]** wherein it is, among other things, observed as under:

"2.... A reading of the order of the Collector makes it clear that he has placed reliance on the said reports while deciding upon the genuineness or otherwise of the community certificate submitted by the appellant. In our judgment, since the said reports have been relied upon while deciding the claim of the appellant in respect of the community certificate and since no notice was given to the appellant in regard to the same the enquiry conducted by the Collector and the suffers from vice of non-observance of the principles of natural justice. The said order is accordingly quashed and set aside. The matter would ordinarily be required to be remitted back to the District Collector for a fresh enquiry after affording the appellant copies of the said reports and after affording him a reasonable opportunity of being heard. We are not informed that a District High Level Caste Scrutiny Committee has been constituted in terms of the directions issued by the Supreme Court in the case of Madhuri

Patil V. Additional Commissioner, Tribal Development, A.I.R. 1995 SC 94. The present enquiry will therefore be required to be conducted by the said District High Level Caste Scrutiny Committee. In the circumstances, present case is now remitted back to the District High Level Scrutiny Committee, which will now issue fresh notice to the appellant, furnish relevant documents pertaining to the aforesaid reports in regard to the enquiry conducted by the R.D.O. and afford the appellant a reasonable opportunity of being heard and thereafter decide the claim made by the appellants on its own merits and in accordance with law. The impugned order passed by the learned Single Judge is accordingly set aside and the same is substituted by the present order. The writ appeal is allowed in the aforesaid terms. However, in the circumstances of the case there will be no order as to costs. Consequently, C.M.P.No.11729 of 1999 is closed as no further order is necessary."

(iv) The Learned Counsel for the Petitioner brings it to the notice of this Court that an **Order dated 16.08.2004 in W.P.No.30841 of 2002 [between P.Jeya V. Union of India, rep. By the Joint Secretary (Revenue), Government of Pondicherry, Pondicherry]**, wherein at paragraph 35, it is laid down as follows:

"35.The Constitution of India forbids discrimination, but promotes reasonable classification. In the case of issuance of the scheduled caste certificate in favour of the son of the petitioner, she being the mother and in spite of herself being the origin and continuing to be the resident of Pondicherry particularly, on the relevant date of notification of the Presidential Order, on 5.3.1964 citing the impugned Government Order and stating that the son of the petitioner since did not have the same status particularly on the crucial date of the Presidential Order, he is denied of his due in the matter of issuance of the scheduled caste certificate in his

favour, in spite of both the parents belonging to the Adi Dravidar Community is the grievance of the petitioner. In these circumstances, and in view of the position of law declared on the subject by Articles 14 and 15 of the Constitution of India on par way in the equal manner giving equal protection and further prohibiting the kinds of discrimination as found under Article 15(1) of the Constitution of India, particularly the discriminations on sex and therefore, only in the earlier Government Order dated 3.8.1995 giving equal importance to the father and the mother entitling the child to get the scheduled caste certificate could be upheld, since being reasonable classification, no mention need be made that the impugned memorandum dated 10.11.2000, which is discriminatory against the female, giving credence only to the male and suppressing the rights of the female and since there cannot be any such discrimination since it is as bad as imposing a condition that the mother

of the child alone should be the origin of the Pondicherry State on the crucial date, which would again be discriminated and therefore, it is only desirable and except within the meaning of the Articles 14 and 15 of the Constitution of India to empower either of the parents as the requirement for the issuance of the scheduled caste certificate ie., the origin of either the father or the mother on the crucial date of notification and Presidential Order, which would alone serve the ends of justice etc."

Respondent's Submissions:

9. In response, the Learned Special Government Pleader for the Respondent takes a stand that the Respondent denies the averment that Petitioner's father was a resident of Pondicherry even before 1964 and therefore, he was to be considered as a person of Pondicherry Origin.

10. The Learned Special Government Pleader for the

Respondent brings it to the notice of this Court that the Petitioner made an Application before the Deputy Tahsildar, Bahour on 04.06.2002 praying for issuance of Community Certificate claiming that he belongs to Scheduled Caste Adi Dravida Community producing evidence such as Caste Certificate obtained by him on 25.07.2000 and his father viz., P.M.Purshothaman's service book particulars wherein the caste was recorded as SC (Origin), a certificate from Thiruvallur Panchayat, his birth certificate, I.D. Card issued to his father by the Adi Dravidar Welfare Department.

11.At this juncture, the Learned Special Government Pleader for the Respondent proceeds to point out that the Deputy Tahsildar, Taluk Office, Bahour conducted an enquiry through Village Administrative Officer and Revenue Inspector concerned and examined the evidence produced by the Petitioner. In fact, the Village Administrative Officer, Kirumambakkam Village and Revenue Inspector Seliamedu Firka that the Petitioner belongs to Hindu Adi Dravida and is a Native of Pondicherry and Indian by Nationality. Therefore, the Deputy Tahsildar, Taluk Office, Bahour issued the Petitioner, the Nationality, Residence and Community Certificates on 07.06.2002, certifying that he is an Indian, a Native

and belongs to 'ADI DRAVIDA' Caste.

12.The Learned Special Government Pleader for the Respondent proceeds to point out that after the issuance of the above certificates, one S.Veerabathrasamy, No.22, IV Cross Street, Kurinji Nagar Lawspet, Pondicherry, made a complaint dated 25.08.2003 mentioning that the Petitioner is a SC migrant and obtained caste certificate as if he belongs to SC Pondicherry Origin under Pondicherry (Constitution) SC Orders, 1964 and due to which, his daughter V.Arularasi was deprived of M.Tech admission in Pondicherry Engineering College.

13.The Learned Special Government Pleader for the Respondent submits that based on the aforesaid complaint of S.Veerabathrasamy, the then Deputy Tahsildar, Taluk Office, Bahour was required to conduct a 'Discreet Enquiry' into the issuance of Caste Certificate to the Petitioner and after conducting a Discreet Enquiry, the Deputy Tahsildar had tendered his Report.

14.The Learned Special Government Pleader for the

Respondent contends that the Deputy Tahsildar, Taluk Office, Bahour, in his Enquiry Report, had stated that the father of the Petitioner viz., Purushothaman was born on 01.03.1948 at Peria Kattupalayam (in Tamil Nadu State) and had studies at Periyakattupalayam and at Chidambaram till 1967. Further, in the year 1972, the Petitioner's father joined the service of Union Territory of Pondicherry and during the year 1975 he married one Vasantha at Periakattupalayam. Moreover, the said Vasantha secured an employment as Nursing Assistant in Health Department, Puducherry on 29.09.1986.

15. The Learned Special Government Pleader for the Respondent contends that during the year 1992, the family shifted their residence from Periyakattupalayam to Kirumampakkampet and later shifted to PHC quarters and then again shifted to Periakattupalayam in the year 2000. That apart, the Petitioner's father had voluntarily retired from service and later expired on 23.04.2000. Besides these, it is represented on behalf of the Respondent that after the demise of Petitioner's father, the Petitioner's mother along with children shifted their residence to Tamarikulam Street, Tavalakuppam (UT of Pondicherry) and later

shifted to their new house at Lalitha Nagar. The Deputy Tahsildar, Bahour, in support of his Report, had enclosed the Petitioner's father's study certificate, the nomination form for Death-cum-Retirement Gratuity, CGEIS, GPF, Family Pension and other forms duly filled at the time of retirement. In all these documents, the address of the Petitioner's father as well as family was mentioned as 'Periakattupalayam', Tamil Nadu.

16.The Learned Special Government Pleader for the Respondent points out that even the Voters List of Cuddalore Constituency of Tamil Nadu pertaining to the year 1999 and 2002, a sale deed dated 13.10.1998 where the Petitioner's father was described as a Purchaser and the death certificate of Petitioner's father annexed by the Deputy Tahsildar together with his report show that he was a resident of Periakattupalayam, Tamil Nadu.

17.The Learned Special Government Pleader for the Respondent submits that the Petitioner was called to the office of the Respondent to explain his position in the subject matter in issue and in fact, the Petitioner was called on 05.12.2003 to the Respondent's office and he sought time to produce document to

establish his parent's residence particulars before the year 1964 and he was given time accordingly. However, the Petitioner on 18.12.2003 had appeared and informed that he had no document to establish his parents residence in the Union Territory of Pondicherry before the year 1964.

18.The Learned Special Government Pleader for the Respondent contends that the Deputy Tahsildar, who issued a Caste Certificate, was also provided with an opportunity to represent his case and he had stated that he issued the certificate based on the verification report of Village Administrative Officer, Revenue Inspector concerned and the Panchayat certificate produced by the Petitioner.

19.The Learned Special Government Pleader takes a core stand that it was found that the Petitioner had secured the caste certificate by suppressing facts and furnishing ambiguous documents as proof and therefore, the impugned cancellation certificate dated 25.07.2000 was issued to the Petitioner. Also, a plea is taken on behalf of the Respondent that after the Petitioner was provided with an adequate opportunity to produce any

document to establish his case, he had failed in this regard and therefore, the superior authority to the authority who issued the certificate is well within his ambit to cancel the certificate on finding the same was a wrong one. In short, the action of the Respondent, in cancelling the certificate No.4195/B/DTB/2000 dated 25.07.2000 through proceedings dated 15.06.2004, is in accordance with Law.

20.Respondent's Decisions:

(i) The Learned Special Government Pleader for the Respondent cites the decision of the Hon'ble Supreme Court (Three Judges Bench) in **Marri Chandra Shekhar Rao V. Dean, Seth G.S.Medical College and others, (1990) 3 Supreme Court Cases 130 at page 131**, wherein the facts are as under:

"The petitioner was born in Tenali in the State of A.P. It is stated in the petition that he belongs to Gounda community also known as Goudi'. This community is recognised as 'Scheduled Tribe' in the Constitution (Scheduled Tribes) Order, 1950 as amended up to date. The father of the petitioner had obtained a Scheduled Tribe certificate from the

Tahsildar and on that basis he got an employment in ST quota in a Government of India Undertaking and was placed in Bombay in the State of Maharashtra. The Petitioner accordingly came to live in Bombay since the age of nine years. After passing the 12th standard examination of the Maharashtra State Board of Secondary and Higher Secondary Examination, Bombay Divisional Board, the petitioner submitted application for admission to the respondent medical college seeking benefit of reservation in favour of Sts. But he was denied the admission to the MBBS course in any of the respondent medical colleges though ST candidates who had secured lesser marks than him had been admitted. The denial of admission was based on a circular dated February 22, 1985 issued by the Government of India, Ministry of Home Affairs which, interalia, states that a Scheduled Caste / Tribe person who has migrated from the State of Origin to some other State for the purpose of seeking education, employment etc.,

will be deemed to be a Scheduled Caste / Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the state to which he has migrated. Therefore, the question is whether one who is recognised as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the State of migration or where he later goes? Disposing of the Writ Petition the Supreme Court held that 'The petitioner is not entitled to be admitted to the Medical College on the basis that he belongs to Scheduled Tribe in his original State'. (Para 24)"

Moreover, in the aforesaid decision at page 131, it is observed and held as follows:

"Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that

they make way for the disadvantaged and disabled of that party of the community who suffer from disabilities in those areas. Scheduled Castes and Scheduled Tribes say of Andhrapradesh do require necessary protection protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to to other communities. This must be the basic approach to the problem. (Para 10)"

Besides the above, in the aforesaid decision, at page 132 and 133, it is observed as follows:

"Preventing a scheduled tribe candidate of Andhrapradesh from getting a medical seat in Maharashtra under the Scheduled Tribe quota would not be violative of Article 14 because a Scheduled Tribe Candidate of Andhrapradesh will be entitled to all the benefits in medical colleges of the State of Maharashtra. It is also not possible

to accept the submission that under Articles 14, 19(1)(d), (e) and (f), if a parent wishes to keep his child with him, the opposite view would necessarily mean that he must keep his child with him, the opposite view would necessarily mean that he must remain confined to his home State, disregarding all suitable job opportunities commensurate with his education, experience and talent.

These are not additional protection, i.e., he can only enjoy the protection of the scheduled Caste or Scheduled Tribe but he cannot enjoy the protection of non-Scheduled Tribes or Castes in addition to the existing fundamental rights"

(ii) The Learned Special Government Pleader for the Respondent relies on the decision of the Hon'ble Supreme Court in ***Action Committee On Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another V. Union of India and another, (1994) 5 Supreme Court Cases 244, at special page 245***, wherein it is held as

follows:

"On a plain reading of Clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. The castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State of Union Territory for which it is specified. Considerations for specifying a particular caste or tribe or

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

Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-Makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

(iii) The Learned Special Government Pleader for the Respondent brings it to the notice of this Court the decision of the Hon'ble Supreme Court (Five Judges Bench) in ***State of Maharashtra V. Milind and others, AIR 2001 Supreme Court 393***, wherein at paragraph 10, it is laid down as follows:

"10. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Schedules Tribes in relation to a State or Union Territory, as the case may be. The

language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words 'castes' or 'tribes' in the expression 'Scheduled Castes' and 'Scheduled Tribes' are not used in the ordinary sense of the terms but are used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order,

1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some Orders were issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to orders issued by Amendment Acts passed by the Parliament."

Apart from that, in the aforesaid decision at page 410, wherein at paragraphs 34 & 35, it is observed as follows:

"34. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in

services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit

or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

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

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

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

3. A notification issued under Clause (1) of [Article 342](#), specifying Scheduled Tribes, can be amended only by law to

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

4. It is not open to 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 vs. Anirudh Patar & others (1971) 1 SCR 804 : (AIR 1971 SC 2533) and Dina vs. Narayan Singh (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

(iv) The Learned Special Government Pleader for the Respondent seeks in aid of the decision of the Hon'ble Supreme Court (Five Judges Bench) in ***E.V.Chinnaiah V. State of A.P. and others, (2005) 1 Supreme Court Cases 394 at special page 397***, it is observed and held as follows:

"Article 341 indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in that Presidential List. In the entire Constitution wherever reference has been made to "Scheduled Castes" it refers only to the list prepared by the President under Article 341 and there is no reference to any subclassification or division in the said list except, maybe, for the limited purpose of Article 330, which is not applicable to the facts of this case. There is no provision either to subdivide, subclassify or subgroup these castes which are found in the Presidential List of Scheduled Castes. Therefore, it is clear that the

Constitution intended all the castes including the subcastes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution and this group cannot be subdivided for any purpose. The Constitution intended that all the castes included in the Schedule under Article 341 would be "deemed to be" one class of persons. (Paras 13, 20, 21 and 26)"

(v) The Learned Special Government Pleader for the Respondent draws the attention of this Court to the decision of the Hon'ble Supreme Court in ***S.Pushpa and others V. Sivachanmugavelu and others, (2005) 3 Supreme Court Cases 1 at special page 2***, wherein it is held as follows:

"There has been no violation of any constitutional or any other legal provision in making selection and appointment of migrant Scheduled caste candidates against the quota reserved for Scheduled Castes on the post of Selection Grade Teachers. The view to the contrary taken by the

Tribunal cannot, therefore, be sustained and has to be set aside. (Para 22)

The Administrator (Lt.Governor of Pondicherry) and his Council of Ministers Act under the general control of and are under an obligation to comply with any particular direction issued by the President. Further, the Administrator (Lt Governor of Pondicherry) while acting under the scope of the authority given to him under Article 239 of the Constitution would be the Central Government. In the context of Article 246, Union Territories are excluded from the ambit of the expression "State" occurring therein. The Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation for SC/ST in respect of posts / services under the Central Government are applicable to posts / services under the Pondicherry Administration as Well. Since all SC/ST candidates which have been recognised as such under the orders issued by the

President from time to time irrespective of the State / Union Territory, in relation to which particular castes or tribes have been recognised as SCs/STs are eligible for reserved posts / services under the Central Government, they are also eligible for reserved posts / services under the Pondicherry Administration. Consequently, all SC/ST candidates from outside the UT of Pondicherry would also be eligible for posts reserved for SC/ST candidates in the Pondicherry Administration. Right from the inception, this policy is being consistently followed by the Pondicherry Administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration. (Paras 14,17 and 16)”

(vi) Apart from the above, the Learned Special Government Pleader for the Respondent cites the decision of the Hon'ble Supreme Court in ***Subhash Chandra and another V. Delhi Subordinate Services Selection Board and others, (2009) 15***

Supreme Court Cases 458 at special page 460, wherein it is observed and held as under:

"There is a distinction between Article 15(4) and Article 16(4) of the Constitution. The words "Backward Classes" and "Scheduled Castes and Scheduled Tribes" find place in Article 15(4) but only the words "backward class of citizens" find place in Article 16(4). The term "backward class of citizens" contained in Article 16(4) includes Scheduled Castes and Scheduled Tribes for all intent and purport. Therefore, the protection sought to be accorded to a section of the citizenry must not only be to Backward Class but may also be to Scheduled Castes and Scheduled Tribes for whom a special provision can be made. Indisputably, the classes contemplated by Article 16(4) may be wider than those contemplated by Article 15(4). If they are Backward Classes for the purpose of Articles 16(1) and 16(4) and not Scheduled Castes and not Scheduled Tribes, they will come within the purview of the

reservation for Backward Classes and not the one which is exclusively meant for Scheduled Castes and Scheduled Tribes within the purview of reservation policy of the State. (Paras 21,22 & 72)

Article 16(4) cannot be made applicable for the purpose of grant of benefit of reservation for Scheduled Castes or Scheduled Tribes in a State of Union Territory, who have migrated to another State or Union Territory and they are not members of the Scheduled Castes and Scheduled Tribes [in that recipient State]. By virtue of Article 341, the Presidential Orders made under Article 341(1) acquire an overriding status. But for Articles 341 and 342 of the Constitution, it would have been possible for both the union and the States to legislate upon or frame policies, concerning the subject of reservation vis-a-vis inclusion of castes/ tribes. The presence of Articles 338, 338-A, 341, 342 in the Constitution clearly precludes that. (Para 66)

If a caste or tribe is notified in

terms of the Scheduled Castes Order or the Scheduled Tribes Order, the same must be done in terms of Article 341(1) as also Article 342(1) of the Constitution of India, as the case may be. No deviation from the procedure laid down therein is permissible in Law. If any amendment / alteration thereto is required to be made, recourse to the procedure laid down under Articles 341(2) or 342(2) must be resorted to. (Para 75)"

21.Respondent's Scenario of Case Laws:

(i) The Learned Special Government Pleader for the Respondent points out the decision in ***State of Uttaranchal V. Sandeep Kumar Singh and others, (2010) 12 Supreme Court Cases 794, at special page 800, wherein at paragraph 10 to 12,*** it is held as under:

"10.A two-Judge Bench in Subhash Chandra & Anr. vs. Delhi Subordinate Services Selection Board (2009) 15 SCC 458 held that the dicta in S. Pushpa case ((2005) 3 SCC 1) is an obiter and does not lay down any

binding ratio. We may notice that a three Judge Bench in S. Pushpa case relied on Marri Chandra Shekhar Rao & Action Committee on Issue of Caste Certificate to Scs/STs. ((1994) 5 SCC 244) cases and understood the ratio of those judgments in a particular manner. In our considered opinion, it was not open to a two Judge Bench to say that the decision of a three Judge Bench rendered following the Constitution Bench judgments to be per incuriam.

11. In Central Board of Dawoodi Bohra Community & Anr. vs. State of Maharashtra & Anr. ((2005) 2 SCC 673) a Constitution Bench of this Court in categorical terms held that the law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser Coram cannot disagree or dissent from the view of the law taken by a Bench of larger Coram. In case of doubt all that the Bench of lesser Coram can do is to invite the attention of the Chief Justice and

request for the matter being placed for hearing before a Bench of larger Coram than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a Coram larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

12. In our view, a two Judge Bench of this Court could not have held the decision rendered by a three Judge Bench in *S. Pushpa case (2005) 3 SCC 1* to be obiter and per incuriam."

सत्यमेव जयते

(ii) The Learned Special Government Pleader for the Respondent relies on the decision of the Hon'ble Supreme Court in ***Puducherry Scheduled Caste People Welfare Association V. Chief Secretary to Government, Union Territory of Pondicherry and others, (2014) 9 Supreme Court Cases 236***

at special page 240 & 241, wherein at paragraph 11 to 13, it is observed as follows:

"11. It will be seen from para 2 of the above Presidential Order that the castes, races or tribes or parts of or groups within castes, races or tribes (15 in all) specified in the Schedule appended thereto are deemed to be Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Pondicherry so far as regards members thereof are resident in the Union Territory. The Government Orders, however, have confined reservation benefits to Scheduled Castes origins of the Union Territory of Pondicherry. It would be seen that the Presidential Order does not speak of "origins" of the Union Territory of Pondicherry, it only speaks of "resident".

12. Article 341 of the Constitution of India provides as under:-

"341. Scheduled Castes.-(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the

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

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

13. It is important to bear in mind that it is by virtue of the notification of President under [Article 341\(1\)](#) that the Scheduled Castes come into being. The members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of [Article 341](#) empowers Parliament alone by law to include or exclude from the list of

Scheduled Castes specified in a notification issued under Clause (1) by the President. By no executive power, the amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by the Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order."

(iii) The Learned Special Government Pleader for the Respondent refers to the Order in ***Original Application Nos.205 and 221 of 2005 dated 20.01.2006 [between The Pondicherry S.C. People's Welfare Association, rep. By its***

Presidentm Pondicherry and another V. Union of India, rep. By Govt. of Pondicherry, Pondicherry and 17 others] wherein at 29, it is observed as follows:

"29.The case on hand however stands on a different footing. The Govt. of Pondicherry specifically through their Notifications invited applications from persons of SC origin and excluded the migrant Scs. The Pondicherry Govt. base their decisions with reference to the several orders and communication and policy decisions of the Central Government besides the Presidential Notification of 1964. Therefore, the OAs assailing the decision and selection on the above basis cannot be assailed as illegal or unconstitutional."

(iv) Also, the Learned Special Government Pleader refers to the Order **in O.A.No.1553 of 2011 dated 16.12.2014 [between S.Selvaraju V. The Government of Pondicherry rep. By its Chief Secretary, Chief Secretariat (Education), Pondicherry]** wherein at paragraph 18, it is observed and held as follows:

"18.In fine, the writ petition is

allowed and it is ordered that for filling up the vacancies notified viz., for appointment of Civil Judges (Junior Division) in Puducherry Judicial Service pursuant to Notification dated 23.11.2014, candidates belonging to Puducherry Union Territory alone are entitled for selection against the notified reserved vacancies: two for OBC and one vacancy for Scheduled Caste, and the candidates belonging to other States can complete only for the vacancies under General/ unreserved category."

(v) The Learned Special Government Pleader for the Respondent refers to the Judgment in ***W.A.Nos.1225 & 1257 of 2015 dated 04.09.2015 [between The Pondicherry Scheduled Caste People's Welfare Association, Puducherry V. Union of India, Rep. By the Government of Pondicherry, Puducherry]*** wherein at paragraph 27, it is observed as follows:

"27.The Union Territory of Pondicherry by adopting a policy in the light of the Constitution and the Constitution (Pondicherry) Scheduled Caste Order,

1964 and in accordance with the Law declared by the Constitution Benches in Marri Chandra Shekhar Rao and Action Committee has not committed any legality by restricting the benefits of reservation in education to the Scheduled Castes of Pondicherry."

Analysis:

22. At the outset, it is to be pointed out that 'Natural Justice' is to prevent any miscarriage of Justice. On Administrative Authority is primarily to act fairly and justly and not in an capricious or arbitrary or whimsical fashion. It is true that the 'Principles of Natural Justice' are declared to be a constituent feature of Article 14(1) of the Constitution of India as per decision in ***D.K.Yadev V. J.M.A. Industries Limited, (1993) 3 Supreme Court Cases 259 at special page 269.***

23. In short, 'Natural Justice' is an antithesis of arbitrariness. Inasmuch as the non-arbitrariness is a special feature of Article 14. Therefore, as a logical corollary, '*Audi Alteram Partem*' is a

requirement of the Article 14 as per decision of the Hon'ble Supreme Court in ***Basudeo Tiwary V. Sido Kanhu University and others*** reported in ***(1998) 8 Supreme Court Cases 194.***

24. It is to be noted that the 'Principles of Natural Justice' cannot be imprisoned within a straight jacket cast iron formula. In this connection, this Court very aptly cites the decision of the Hon'ble Supreme Court in ***The Chairman, Board of Mining Examination V. Ramjee, AIR 1977 Supreme Court 965 at special page 969***, wherein at paragraph 13, it is, among other things, observed as follows:

"13..... Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be

exasperating. We can neither be finical nor fanatical but should be flexible yet firm in the jurisdiction. No man shall be hit below the belt – that is the conscience of the matter.”

25. Undoubtedly, justice and fair play require that the concern is to be afforded with a reasonable opportunity. Moreover, an opportunity to canvass the correctness of reasoning for taking the proposed action ought to be given to the concerned person.

26. As far as the present case is concerned, the Petitioner admittedly was not furnished with the copy of the Report of Discreet Enquiry conducted by the Deputy Tahsildar. In fact, the Tahsildar, who issued the caste certificate, was provided with an opportunity to represent his case and that the issuing authority laid information that he had issued the community certificate resting upon the verification report furnished by the Village Administrative Officer, Revenue Inspector concerned and the Panchayat certificate produced by the Petitioner.

27. In fact, when the plea of the Respondent is that the concerned Deputy Tahsildar [who was directed by the Respondent

to conduct Discreet Enquiry] had submitted his report to the effect that the Petitioner's father is not an origin of Scheduled Caste belonging to Pondicherry and as such, the Petitioner is not eligible to be considered as an Origin Scheduled Caste, the Respondent, in all fairness, based on Justice and Fair Play, should have provided the Petitioner with the copy of the 'Discreet Enquiry Report' together with enclosures to him so as to respond to the said Report. Admittedly, the Discreet Enquiry Report [together with statements of concerned persons] were not furnished to the Petitioner.

28. In this regard, it is to be mentioned that the Pondicherry Government had issued G.O.Ms.No.152, Department of Revenue And Disaster Management, dated 24.11.2005 wherein at paragraph 6 to 8, it is observed as under:

"6. The Village Level Committee is only the recommending body for the issue of certificates. Only such cases which could not be decided on merits in the usual procedures adopted by the authorities need be referred to the committee. The affected person also may apply to the Chairman of the Village

Level Committee for redressal. Unanimous recommendation made by the Village Level Committee is binding on the certificate issuing authorities for the grant of caste /community certificate. If the Tahsildar of Taluk Office or Deputy Tahsildar of Sub-Taluk Office as the case may be, is not satisfied on the recommendations of the Village Level Committee, he shall refuse to issue the caste/community certificate with the reasons recorded in the file/reference/report and a speaking order to be served on the affected applicant.

7.The order of the Tahsildar or Deputy Tahsildar shall be appealable to the Deputy Collector (Revenue) and his decision will be based on the factual position and enquiry.

8.If there is no unanimous decision of the Committee, then the opinion of the majority members shall be taken into account vis-a-vis the actual facts of the applicant in relation to the existing Orders/ Rules by the Committee.”

29.A cursory perusal of the aforestated G.O.Ms.No.152 dated

24.11.2005 refers to the issuance of instructions being issued by the Revenue Department through Memorandum No.9565/C2/Rev/2000 dated 10.11.2000 to the certificate issuing authorities to issue caste certificate by conducting discreet enquiry. Further, the tenor of the G.O. points out that to further strengthen the scope of enquiry and to facilitate the Applicants for getting the caste/community certificate by avoiding false claim and in supersession of the committee already constituted through G.O.Ms.No.10 dated 05.03.2003 of the Revenue Department of Pondicherry, a Village Level Committee is constituted and the composition and functions of the Village Level Committee reads as under:

1.	Tahsildar/Deputy Tahsildar	Chairman
2.	Revenue Inspector of the concerned Firka	Member
3.	Village Administrative Officer	Member
4.	Welfare Inspector (Adi Dravidar Welfare Dept.)	Member
5.	Village Elders (Four Members) (More than 50 years of age and who ordinarily reside in the same village for more than 50 years.) - At least one among them should be a Government servant of a minimum Group 'D' status. Of the 4 members there should be 3 S.C. Person with origin status, and one non-SC member	Member

30.Indeed, in para 9 of the G.O.Ms.No.152 dated 24.11.2005 speaks of the 'Following procedure shall be adopted to apply to the Village Level Committee':

"(a)The application for grant of caste/community certificate shall be made to the Tahsildar/Deputy Tahsildar of Taluk/Sub-Taluk Office, as the case may be.

(b)The parent, guardian or the applicant, as the case may be, shall file an affidavit duly sworn and attested by any Gazetted Officer or non-Gazetted Officer or village elders with particulars of castes and sub-castes, the place from which he originally hails from

(c)Application for grant of the caste/community certificate by the village level committee shall be filed at least two months in advance before seeking admission into educational institution or for appointment to a post.

(d)After receipt of the application and after giving acknowledgement to the applicant, the application along with enclosures may be forwarded to the Village Administrative Officer through Revenue Inspector. The VAO shall enquire in detail and submit the report by collecting available genuine evidences to

the RI. The RI may verify the report of VAO and submit the report with his recommendations to the Tahsildar/Dy. Tahsildar. Simultaneously, a copy of the application will be referred to the Welfare Inspector, Adi-Dravidar Welfare Department, Pondicherry for his separate enquiry

(e)The Tahsildar/Dy.Tahsildar, will convene the meeting of the Committee once in a fortnight and clear the applications received from the particular village with its recommendations.

(f)The Chairman of the Village Level Committee shall maintain all records of the enquiry, registers and other documents in a proper manner.

(g)The minutes of the village committee is to be written by the VAO and it shall be signed by all the members of the Committee with each of their views thereon. The minutes may be sent to the Tahsildar/Deputy Tahsildar as the case may be for taking appropriate decision."

31.Also, in the aforesaid G.O., at paragraphs 10 and 12, it is observed as follows:

"10.Regarding the cancellation of caste/community certificates (SC, OBC and MBC) the District Magistrate shall cancel the caste/ community certificate in consultation with the Members of District Committee and also by giving reasonable opportunity to the affected applicant/parent/ guardian. Any Authority lower than the rank of District Magistrate is not competent to cancel the certificate. For the purpose of cancellation of the certificate, the District Committee is constituted with the following composition:-

1	District Magistrate	Chairman
2	Director, Adi-Dravidar Welfare Department, Pondicherry, (in respect of S.C. Certificates) Director, Social Welfare Department, Pondicherry (in respect of OBC Certificates)	Member
3	Superintendent of Police (Vigilance)	Member
4	Head of Department or any Professor of Anthropology Department, Pondicherry University, Pondicherry	Member
5	Any two of the Non-Official selected by the existing Members	Member
6	Special Officer, Office of the Additional Secretary (Revenue), Pondicherry in the cases of Pondicherry District or Dy. Collector (Rev.) Karaikal in respect of Karaikal District	Member Secretary

12.As regards the cancellation of caste or community certificate, the following procedure shall be adopted.

(a) The District Magistrate may also

constitute a vigilance cell consisting of Superintendent of Police and Police Inspector of Vigilance and Anti-Corruption Unit to verify the genuineness of any caste/community certificate and the social status claimed by the applicant/parent/guardian. The Vigilance Inspector should personally verify and collect all the facts of the social status claimed by the applicant or the parent or guardian, as the case may be. He should examine the school records, birth registration certificate, if any. He should also examine the parent, guardian or the applicant in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the District Magistrate together with all particulars, as envisaged, particularly anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. by the concerned castes or communities etc.

(b) The District Magistrate, on receipt of the report from the vigilance Inspector, if he finds that the claim for such caste/community to be "not genuine" or "doubtful" or falsely or wrongly claimed, the District Magistrate who is the Chairman of District Committee shall issue show cause notice supplying a copy of the report of the vigilance Inspector to the candidate by registered post with acknowledgement due, through the head of the concerned educational institution or office in which the applicant is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of

the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the applicant seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the District Magistrate on receipt of such representation/reply shall convene the committee and the District Magistrate as Chairman shall give reasonable opportunity to the applicant / parent/ guardian to adduce all evidence in support of their claim. A public notice or any other convenient mode may be published in the village or locality and if any person or Association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the applicant or opponent and pass an appropriate order with brief reasons in support thereof.

(c) In case the report is in favour of the applicant and found to be genuine and true, no further action need be taken.

(d) Notice contemplated in para 12(b) should be issued to the parents/guardian also in case the applicant is a minor, to appear before the Committee with all evidences in his order heir support of the claim for the social status certificates.

(e) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the District Committee finds the claim to be

false, they should pass an order cancelling the certificate issued and confiscate the same. It should be communicated within one month from the date of the conclusion of the proceedings about the result of enquiry to the parent/guardian and the applicant with a copy to the District Collector.

(f) In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an office or post, is getting expired, the candidate may be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the caste/community certificate already issued on an affidavit duly sworn by the parent/guardian/applicant before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the District Committee."

32. Continuing further, the Government of Pondicherry had issued G.O.Ms.No.15, Department of Revenue and Disaster Management, dated 15.06.2015, wherein at paragraphs 3 to 6, it is observed as follows:

"3. But, the words, "(SC, OBC and MBC)" in para 10 of the said Government Order restrains the District Magistrate from cancelling a Scheduled Tribe Certificate which has been issued based on a certificate

obtained fraudulently. The Hon'ble High Court, while allowing the Order, dated 19-1-2015 in W.P.No.30955/2014 of the Hon'ble High Court of Judicature at Madras had observed that 'the respondents are at liberty to deal with the subject of cancellation of Scheduled Tribe Certificates if any such power is conferred on the contempt authority to act, in accordance with law'.

4.The Hon'ble Supreme Court of India in its order, dated 9.8.1996 in the case of Indian Bank Vs. Satyam Fibres India Private Limited held that, the administrative authorities have inherent powers to recall or revoke their own orders if such order was obtained by playing fraud on such public authority. As a necessary corollary if something is done by public authority at the behest of a person who played fraud, the same public authority can nullify that was done as vitiated by fraud. Under Section 21 of General Clauses Act, 1897 (Central Act No.X of 1897), an authority who has power to issue, inter alia, orders has also power to rescind such order.

5.Therefore, para 10 of G.O.Ms.No.152, dated 24.11.2005 cited above is amended as hereunder:

"10.Regarding the cancellation of Scheduled Caste/Scheduled Tribe and all other Caste/Community Certificates, the District Magistrate shall cancel the Caste/Community Certificate in consultation with the

Members of District Committee and also by giving reasonable opportunity to the affected applicant/parent/guardian. Any authority lower than the rank of District Magistrate is not competent to cancel the certificate. For the purpose of cancellation of certificate, the District Committee is constituted with the following composition:-

1. District Magistrate, Puducherry/ ... Chairman, Karaikal.
2. Direct, Adi-Dravidar Welfare ... Member
Department, Puducherry.
(in respect of SC/ST Certificates).
Director, Social Welfare Department,
Puducherry.
(in respect of all other Caste/
Community Certificates other than
SC/ST Certificate.)
3. Superintendent of Police (Vigilance) ... Member
4. Head of Department or any
Professor of Anthropology
Department, Pondicherry University,
Puducherry.
5. Any two non-official members ... Member
selected by the existing members.
6. Special Officer, Office of the Special/ ... Member
Additional Secretary (Revenue), Secretary
Puducherry in respect of Puducherry
District comprising of Puducherry,
Mahe and Yanam regions/Deputy
Collector (Revenue), Karaikal in
respect of Karaikal District.

6.All other procedures/instructions contained in the G.O.Ms.No.152, dated 24.11.2005 of the Department of Revenue and Disaster Management, Puducherry remain the same."

33.At this juncture, it is useful to refer to the following observations of the Hon'ble Supreme Court in the decision **Anand V. Committee for Scrutiny and Verification of Tribe Claims and others** reported in **(2012) 1 Supreme Court Cases 113, at special page 120 & 121**, whereby and whereunder, in paragraph 22 & 23, it is laid down as follows:

"22.It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe

and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.



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23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

Disposition:

34. Inasmuch as the Petitioner was not furnished with the copy of the Report of the Discreet Enquiry conducted and submitted by the Deputy Tahsildar, Taluk Office, Bahour [through Village Administrative Officer and Revenue Inspector concerned] together with the relevant statements recorded thereto and further, he was not required to submit his objection/remarks to the copy of the 'Discreet Enquiry Report' made by the Deputy Tahsildar, Taluk Office, Bahour, this Court comes to a resultant conclusion that the impugned order passed by the Respondent dated 15.06.2004 in Proceedings No.376/DCRS/Cert./B4/2004 is in breach of the

'Principles of Natural Justice'. As such, the impugned order dated 15.06.2004 passed by the Respondent suffers from vice and capriciousness. In short, an adverse order cannot be passed much to the detriment of the Petitioner by not providing him with the 'Discreet Enquiry Report' together with the statements of Village Administrative Officer and Revenue Inspector concerned. On this simple score alone, this Court interferes with the impugned order dated 15.06.2004 passed by the Respondent and sets aside the same, to prevent a miscarriage of Justice. Consequently, the Writ Petition succeeds.

35. In fine, the Writ Petition is allowed. The impugned order dated 15.06.2004 is set aside for the reasons assigned by this Court in this Writ Petition. The matter is remitted back to the District Committee (Headed by District Magistrate, Puducherry as per G.O.Ms.No.15 dated 15.06.2015) for arriving at a fresh decision in the subject matter in issue. The District Committee, Puducherry is directed to furnish a copy of the Discreet Enquiry Report of Deputy Tahsildar, Sub Taluk Office, Bahour (who conducted an enquiry through Village Administrative Officer and the Revenue Inspector concerned) together with statements of witnesses to the

Petitioner within a period of two weeks from the date of receipt of copy of this order. Thereupon, the Petitioner is granted one week time to submit his objections in writing, by raising all factual and legal pleas, before the District Committee, Puducherry. Soon after receipt of objections/reply from the Petitioner for the Discreet Enquiry Report, the District Committee, Puducherry is to proceed further in the subject matter in issue, of course, after providing necessary opportunity, by adhering to the Principles of Natural Justice to the Petitioner, in the manner known to Law and in accordance with Law, by passing a reasoned speaking dispassionate order on merits of the matter, within a period of four weeks thereafter. The District Committee, Puducherry, at the time of passing a fresh order/ arriving at a fresh decision in the subject matter in issue, is to consciously keep in mind the tenor and spirit of G.O.Ms.No.152 dated 24.11.2005 and also G.O.Ms.No.15, Department of Revenue And Disaster Management, dated 15.06.2015 and to act in a fair and just manner by passing necessary orders. The District Committee, Puducherry shall fix a date of enquiry to the Petitioner well in advance and it is abundantly made clear by this Court that the Petitioner is to appear before the District Committee, Puducherry for the purpose of

conducting enquiry in the subject matter in issue without any default or adducing any lame duck excuses. On any count, the Petitioner shall not abstain from not participating in that enquiry, since his request for seeking issuance of caste certificate that he belongs to SC Adi-Dravida Caste dates back to 04.06.2002 and nearly 15 years have rolled by. No costs.

(M.V., J.) (P.D.A., J.)

21.09.2017

Speaking Order

Index :Yes

Internet :Yes

Sgl

To

1.The District Magistrate,
Puducherry.

2.The Deputy Collector (Rev.) South,
Union of India,
Government of Pondicherry,
Pondicherry.

3.The Government Advocate,
High Court, Madras.

M.VENUGOPAL, J.

and

P.D.AUDIKESSAVALU, J.

Sgl



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