

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on: 27/11/2019****Judgment Delivered on : 06/12 /2019****Writ Petition (C) No. 644 of 2019**

Krishnakant, aged about 68 years, S/o Shri Bhuvneshwar Caste
Saunra R/o Village Mahuapali, Post Boda, Police Station and
Tahsil Baramkela, District Raigarh Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, through Ministry of Tribal Affairs, Shastri Bhawan
New Delhi.
2. State of Chhattisgarh, through the Secretary, Department of
Revenue and Disaster Management, Mahanadi Bhawan,
Mantralaya, Atal Nagar, District Raipur Chhattisgarh.
3. State of Chhattisgarh, through Secretary, SC/ST and OBC
Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, District
Raipur Chhattisgarh.
4. Collector Raigarh, Revenue and Civil District Raigarh Chhattisgarh.
5. Sub Divisional Officer (Revenue) Sarangarh Revenue and Civil
District Raigarh Chhattisgarh.
6. District Registrar Raigarh, Revenue and Civil District Raigarh
Chhattisgarh.
7. Tahsildar, Baramkela, Revenue and Civil District Raigarh
Chhattisgarh
8. Sub Registrar, Baramkela, Revenue and Civil District Raigarh
Chhattisgarh.

---- Respondents

For Petitioners	: Shri Surfaraj Khan, Advocate.
For Respondent/State	: Shri Satish Chandra Verma, Advocate General with Shri Gagan Tiwari and Shri Vikram Sharma, Deputy Government Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. The following questions arise for consideration in this writ petition:

(i) Whether Annexure P/1 Circular dated 30.12.2017 issued by the State Government virtually having the effect of adding/including the castes "सौरा, सौवरा, सौरा, संवरा, सहरा, सॅवरा, सॉवरा" under the head "**Sawra**" with reference to the recognition of the phonetic values of the caste name "**Sawra**" to extend the benefits of Scheduled Tribes to all those segments would amount to alteration/ modification/inclusion of the Scheduled Tribes shown in the 'Presidential Order' issued in terms of Article 342(1) of the Constitution?

(ii) Whether the explanation offered by the State that it does not amount to any modification/inclusion but for 'clarification', can be sustained, in view of the law declared by the Apex Court in **State of Maharashtra v. Milind**, (2001) 1 SCC 4?

(iii) Can the attempt of the State be justified, especially when a specific recommendation/request made by the State in this regard has already been turned down by

the Ministry of Tribal Affairs, Government of India, as per the proceedings bearing No.F. No. 12016/31/2001 C&LM-T dated 29.06.2010?

(iv) When any change/modification to the 'Presidential Order' is clearly prohibited except by an act of Parliament, can it be effected indirectly in the form of 'clarification' by the State Government?

2. For answering the above questions effectively, it will only be worthwhile to have a look at the background leading to the dispute. The Petitioner contends that he belongs to the caste '**Saunra**' and that he is not a member of any Scheduled Tribe, nor has he availed any benefits of the said community flowing from the Constitutional provisions or such other laws/orders issued by the Government. The Petitioner is stated as the owner of various extent of lands comprised in different Khasra numbers and because of dire necessity for money, he wanted to sell his land to some persons who are not members of any tribal community, who turned up to purchase the land. So as to effect registration of the sale, it was necessary for the Petitioner to obtain relevant documents from the Revenue Department; but on approaching the said authorities, they allegedly refused to issue the requisite documents - (बिक्री छॉट), for the reason that the Petitioner, being a member of the Scheduled Tribe community, the property was not liable to be conveyed to a non-tribal. Though the Petitioner tried to convince the revenue authorities with reference to the factual position that he is not a member of any Scheduled Tribe, also with reference to the Presidential Notification issued in terms of Article 342(1) of the Constitution of India, it was

not acceded to; which made the Petitioner to approach this Court by filing Writ Petition (C) No. 2495 of 2018 seeking for appropriate directions to be given to the revenue authorities to provide the necessary materials and also to direct the Sub Registrar, Baramkela to register the sale deed after realising the requisite stamp duty in accordance with law.

3. The Petitioner made a reference to the letter bearing bearing No. TRI/ST/206/2014/2927, dated 20.11.2014 issued by the State to the authorities of the Caste Scrutiny Committee-District Janjgir-Champa, clarifying that only the castes by name “सवर” and “सवरा” were included in the Presidential Order and that a recommendation had already been made to get the castes “सौरा, सौरा, संवरा, सहरा” also to be included therein; however adding that certificates could be issued to persons belonging to such groups only on getting the Presidential Order amended by way of appropriate proceedings. In support of the prayers sought for, the Petitioner sought to rely on the judgment dated 03.04.2013 in Writ Petition (PIL) No. 13 of 2013 (*Vasudev Sharma v. State of Chhattisgarh & Others*), wherein validity of the Circular dated 11.09.2009 issued by the District Collector, Raigarh, prohibiting conveyance of properties belonging to “**Sanwara**” and “**Saunra**” was also challenged. Referring to the Circular dated 29.06.2010 issued by the Central Government, whereby the recommendation/proposal made by the State Government was declined and rejected, the Division Bench of this Court had observed that the impugned Circular dated 11.09.2009 issued by the Collector, was impliedly overruled and superceded and hence, it was not

required to quash the Circular impugned in the said public interest litigation. It was accordingly, that the writ petition was disposed off.

4. The Petitioner contends that, despite the specific declaration by the Division Bench, persons belonging to the caste '**Saunra**' were not being permitted to transact their properties freely and on every occasion, they were being driven to the Court for getting separate individual certificate/clearance/ judgment for causing registration of sale/conveyance of their properties. One such instance is pointed out with reference to Writ Petition (C) No. 671 of 2016, which was disposed of by a learned Judge of this Court as per judgment dated 16.03.2016, clearly holding that in the light of the judgment passed by a Division Bench of this Court in WPPIL No. 13 of 2013, the Respondent authorities were bound to act in conformity with the legal position declared as above, keeping in mind that till date, '**Saunra**' had not been included in the list of Scheduled Tribes, though process may have been initiated.

5. The prayers in Writ Petition (C) No. 2495 of 2018 were resisted by the Respondent/State by filing a reply, pointing out that the Government had issued Circular dated 30.12.2017 (Annexure P/1 impugned in the present writ petition) regarding recognition of the phonetic value of the caste names of the Scheduled Castes and Scheduled Tribes mentioned in English and its pronunciation in Hindi. The caste "**Sawara**" listed at serial No. 41 of the Presidential Order was clarified by the Government in Hindi as "सौरा, सौवरा, सौरा, संवरा, सहरा, सेंवरा, सोंवरा" *etc.* Since the Petitioner was stated as

belonging to “**Saunra**” caste as per the said Circular, he was stated as belonging to a Scheduled Tribe and therefore, as per Section 165 of the Chhattisgarh Land Revenue Code, 1959, the land of a Tribal was not transferable to a non-tribal, without permission of the competent authority.

6. The above writ petition was considered alongwith other similar/connected matters. During the course of hearing, it was submitted by the learned Advocate General (as noted in paragraph 7 of the common judgment dated 24.07.2019) that the State was not pressing the submission with regard to the Scheduled Tribe status of the Petitioners, but for placing reliance on the averment that the Petitioners were belonging to 'Aboriginal Tribe' who need not be a Scheduled Tribe, and hence there was a bar in the transaction without proper sanction of the competent authority, in terms of Section 165(6) of the Land Revenue Code. It was also stated that necessary notifications were issued under the Land Revenue Code declaring the caste of the Petitioners as an 'Aboriginal Tribe' and hence, permission of the authorities concerned was necessary to transact the property, if at all the property was to be sold to a person who was not a member of the Scheduled Tribe. The said version was sought to be rebutted by the Petitioners through their counsel, pointing out that the Petitioners were having absolute rights over their property, that they were neither belonging to any Scheduled Tribe, nor were they members of any 'Aboriginal Tribe' and no notification has been issued by the State showing the particulars of the caste of the Petitioners as having included in the Notification mentioning the 'Aboriginal Tribe'

(Paragraph 8 of the judgment dated 24.07.2019 in WPC No. 2445 of 2018 and connected matters).

7. The submissions made by the learned Advocate General that the authorities of the State would never stand against the right and interests of the persons concerned and the endeavour was only to see that their rights and interests were protected in all manner, so that the property of a tribal was not appropriated by persons having vested interest, or for throw away price, or by way of creation of adverse interests (Paragraph 9 of the judgment). It was also pointed out that, if any petition was filed before the competent authority giving all the particulars of the transaction, it would be considered and necessary clearance would be given, based on the merit involved. It was accordingly, that the writ petitions were disposed of by this Court as per common judgment dated 24.07.2019, as above, directing the Petitioners to submit representation within two weeks and to have it finalised by the competent authority within six weeks thereafter.

8. The case of the Petitioner is that the verdict passed by this Court is still to be given effect to and some of the Petitioners in the earlier round of litigation have already moved this Court by filing Contempt of Court proceedings. Since Contempt of Court proceeding cannot be entertained as an execution proceeding, but to punish the guilty, once the offence is established, it is stated that the Petitioner is constrained to move this Court again, challenging the constitutional validity of Annexure P/1 Circular issued by the State, it being in conflict with the mandate of Article 342 of the

Constitution and the law declared by the Constitution Bench of the Supreme Court in ***Milind*** (supra).

9. A return has been filed on behalf of the Respondents No. 2 to 8 opposing the prayers and in particular, in respect of the challenge raised against Annexure P/1 Circular dated 30.12.2017, asserting that it has not been issued in violation of Article 342 of the Constitution or the verdict passed by the Apex Court, but in view of the specific provision with regard to the conveyance of land belonging to the 'Aboriginal Tribe' declared by the Government in terms of Section 165(6) of the Land Revenue Code. It has also been pointed out that some of the members of the family of the Petitioner had applied for issuance of a caste certificate treating the community as a Scheduled Tribe and after considering the same, Annexure R/1 caste certificate has been issued in this regard. It is asserted in paragraph 11, 12 and 13 of the return that Annexure P/1 Circular has been issued by the Government as a 'Welfare State', only to construe the mistakes/errors/lack of uniformity that crept in the revenue records due to difference in utterance/writing/phonetics in local dialects from place to place within the State, which adversely affects the persons from enjoying their constitutional rights. The State has only clarified/simplified the issuance of caste/social status certificate as per the Chhattisgarh Scheduled Caste, Scheduled Tribe and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 and the rules made thereunder. It is also reiterated that it was never to add or subtract anything from the Presidential Order

issued in this regard, but for providing 'clarification' regarding the phonetic value of each caste prescribed by the State Government for the purpose of revenue records.

10. Shri Sarfaraj Khan, the learned counsel appearing for the Petitioner, referring to the sequence of events, relevant provisions of law and the judicial precedents including the declaration made by the Constitution Bench of the Apex Court in **Milind** (supra) submits that Annexure P/1 Circular issued by the State Government is bad in all respects. It is pointed out that Section 165(6) of the Land Revenue Code is not applicable to the Petitioner; and further that, as per Annexure P/1, the State has virtually attempted to rewrite the 'Presidential Order'. It was also pointed out that, absolutely no power is vested in the Government in this regard and no provision of law is mentioned, under which the said Circular has been issued; adding that Annexure P/1 Circular does not refer to anything with regard to the status of an 'Aboriginal Tribe' or Section 165(6) of the Land Revenue Code, but for specifically referring to a situation prevailing based on the Presidential Order already issued in this regard.

11. Shri Satish Chandra Verma, the learned Advocate General tried to justify the impugned Circular in terms of the version given in their return as mentioned above. By virtue of the specific terminology used in Article 342 of the Constitution of India and the law declared by the Constitution Bench of the Apex Court in **Milind** (supra), there cannot be any dispute to the fact that once a Presidential Order is issued declaring the Scheduled Tribes in terms

of Article 342(1) of the Constitution of India, if at all any further modification by way of inclusion, exclusion or alteration in any manner is to be made, it can only be by an act of Parliament as envisaged under Article 342(2) of the Constitution and this power is not vested even on the President who had issued the Presidential Order under Article 342(1) of the Constitution. It will be worthwhile to have a look on the said provision, which is extracted below:

"342. Scheduled Tribes - (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be."

12. The scope of the constitutional mandate was subjected to hair split analysis by a Constitution Bench of the Apex Court in ***Milind*** (supra) and the conclusions reached in 'paragraph 36' of the judgment, are reproduced below:

"36. 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 entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

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

in the Scheduled Tribes Order if they are not so specifically mentioned in it.

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

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda vs. Anirudh Patar & others* (1971 (1) SCR 804) and *Dina vs. Narayan Singh* (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."

13. From the above, it is explicitly clear, as declared and directed by the Apex Court, that the Presidential Order has to be read as it is and it is for nobody else, including the Courts, to add or exclude/modify/alter it in any manner calling it as synonymous or otherwise; for which the power is exclusively vested upon the Parliament. In the Presidential Order issued in terms of Article 342(1) of the Constitution, the relevant entry/entries are given in Serial No. 41 which is to the following effect: "**Sawar / Sawara**". It is borne out by the pleadings/materials on record that the State Government had felt the necessity to include/add/modify the caste named/styled/ pronounced as

“**Sanwara**” and “**Saunra**” as part of the Entry under Serial No. 41 of the Presidential Order and a recommendation was made in this regard to the Central Government for taking necessary steps for causing it to be amended. The request was considered and it was turned down by the Central Government and the position was let known to the State Government as per communication dated 29.06.2010 {Annexure P/1 to WP(PIL) No. 13 of 2013}. It was in the said circumstances, that the State Government had issued a communication bearing No.TRI/ST/206/2014/2927, dated 20.11.2014 to the authorities of the Caste Scrutiny Committee-District Janjgir-Champa, informing that the caste by name “सौरा, सौरा, संवरा, सहरा” were not included in the Presidential Notification where the castes “सवर” and “सवरा” alone were included and hence no caste certificate could be given to the persons claiming to be members of “सौरा, सौरा, संवरा, सहरा” projecting themselves as members of Scheduled Tribe community. There is no case for the Respondent-State that the request turned down by the Ministry for Tribal Welfare, Government of India, dated 29.06.2010 has ever been subjected to challenge; but for the submission made across the bar that they have taken up the matter again, stated as for the third time, to the Central Government for getting “सौरा, सौरा, संवरा, सहरा” also to be included as part of the Presidential Order by way of appropriate steps.

14. As mentioned already, the District Collector, Raigarh, notwithstanding the above proceedings issued by the Central Government, had issued a Circular dated 11.09.2009 prohibiting the transactions of the

properties belonging to “**Sanwara**” and “**Saunra**” as if the said persons were members of the Scheduled Tribe, which was put to challenge in Writ Petition (PIL) No. 13 of 2013. Placing reliance on the factual position brought on record, that the recommendation sought to be made for inclusion of such community as a part of the Scheduled Tribe by causing amendment to the Presidential Order was turned down by the Ministry as per the proceedings dated 29.06.2010, it was held by a co-ordinate Bench of this Court that the Circular dated 11.09.2009 issued by the District Collector, Raigarh, was impliedly overruled and superceded and hence, it was not required to set aside the Circular dated 11.09.2009 of the District Collector, Raigarh. Thus, the debated question was put to rest, insofar as the said community is concerned. There is no case that the position has undergone any change as on date and this is further evident from the verdict dated 16.03.2016 passed by a learned Judge of this Court in Writ Petition (C) No. 671 of 2016.

15. Now comes the question as to whether any change was possible even in the form of a '**clarification**' as made by the State by issuing the impugned Annexure P/1 Circular so as to cause extension of benefits of the Scheduled Tribe mentioned under Entry No. 41 of the 'Presidential Order' (**Sawar/Sawara**) to some others as well; who are called as “सौरा, सौरा, संवरा, सहरा” based on recognition of the phonetic values of the above two terms already notified in the Presidential Order. According to the State, the derivation of the above two terms as pronounced in Hindi differ from place to place and hence, all those who are called as “सौरा, सौरा, संवरा, सहरा” are

also entitled to be treated as '**Sawar/Sawara**' as included in the Presidential Notification. The State contends that it is only to correct the said "mistake/error/discrepancy", that they have issued Annexure P/1 Circular to extend the benefits in a uniform manner to all concerned (Paragraphs 11, 12 and 13 of the return dated 21.06.2019). Whether this is possible, is the only question to be considered.

16. As mentioned above, the declaration/direction made by the Apex Court in **Milind** (supra), as concluded in paragraph 36, is point blank to the effect the Presidential Order has to be taken/read as it is. Nothing can be added/included or nothing can be removed/excluded and nothing can be modified/alterd in any manner, even holding that the term is 'synonymous' with any other term. Absolutely no power is vested with the State Government in this regard and no authority is conferred upon the State to have such a course with reference to the 'phonetic values'. When the State repeats and reiterates in the return and in the course of arguments, that they have never violated the constitutional mandate of Article 342 or have done anything contrary to the declaration/direction given by the Supreme Court in **Milind** (supra), they have obviously failed to reconcile the effect of Annexure P/1 Circular, whereby the caste called "सौरा, सौवरा, सौँरा, संवरा, सहरा, सँवरा, सौँवरा" are sought to be identified as the two entries "**Sawar/Sawara**", as it exists under Serial No. 41 of the Presidential Order. Whether it is done by way of 'clarification' or as removal of any 'error or mistake', no enabling

provision to have such an exercise is pleaded or substantiated, except a vague reference made to Section 165(6) of the Land Revenue Code.

17. Section 165(6) of the Land Revenue Code reads as follows:

"165. Right of transfer.-

xxx xxx xxx

(6) Notwithstanding anything contained in sub- section (1) the right of Bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-

(i) in such areas as are predominantly inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii) in areas other than those specified in the notification under clause (i), not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing".

At the very outset, it is to be noted that in the earlier round of litigation i.e. on filing Writ Petition (C) No. 2445 of 2018, it was finally heard alongwith the connected case i.e. Writ Petition (C) No. 3158 of 2018 and Writ Petition (C) No. 2495 of 2018 (filed by the very same Petitioner), when it was submitted by the learned Advocate General himself before this Court (as noted in paragraph 7 of the judgment) that the State was not pressing their contention with regard to the 'Scheduled Tribe' status of the Petitioner and

that, it was only contending that the Petitioner was an 'Aboriginal Tribe' notified separately by the Government in terms of Section 165(6) of the Land Revenue Code, for which a person need not be the member of Scheduled Tribe. It was also pointed out that the attempt of the Government was never to place any hurdle with regard to the right of transaction of the property, but only to protect the rights and interests of the 'Aboriginal Tribe', from their property being purchased by persons not belonging to a Scheduled Tribe for paltry amounts or from being created any charge thereon. It was also submitted that, if an application was filed before the competent authority, the facts and figures would be looked into and necessary clearance would be given; which made this Court to dispose of the writ petitions giving appropriate directions in this regard; though it is still to be fruitful so far as the Petitioner is concerned, and hence, the challenge against Annexure P/1 Circular itself.

18. With regard to the applicability of Section 165(6) of the Land Revenue Code, it has been specifically contended by the Petitioner (as already taken note of) that he was neither a member of any Scheduled Tribe, nor is a member of any 'Aboriginal Tribe' and that no notification has been issued by the State Government in terms of Section 165(6) of the Land Revenue Code. The above specific assertion has not been rebutted by the State Government by producing any amendment to the Presidential Order to show that the caste of the Petitioner "**Saunra**" is also included as a Scheduled Tribe in the Presidential Order (which virtually stands conceded)

or any notification issued by the State Government describing the caste of the Petitioner as an 'Aboriginal Tribe' before this Court. Under such circumstance, adverse inference is liable to be drawn against the State. That apart, the version of the State in the earlier round of litigation, as noted in 'paragraph 6' of the judgment dated 24.07.2019 in Writ Petition (C) No. 2495 of 2018 and connected cases was that, the State was not pressing the Scheduled Tribe status of the Petitioner and was only pressing the status as an 'Aboriginal Tribe', for which a person need not be a member of the Scheduled Tribe and that the Government was having power to declare the status as an Aboriginal Tribe. The merit of the said contention was never decided by this Court in the earlier round, as the Petitioners were relegated to file a representation for clearance before the competent authority, simultaneously directing to have the same considered within the specific time. Since the constitutional validity of Annexure P/1 Circular is now put to challenge, this Court is bound to look into the provisions of the Land Revenue Code as well, to ascertain and declare the scope of the said provision and the contention raised by the State in this regard.

19. The version of the State Government, that to declare a person as a member of 'Aboriginal Tribe', he need not be a member of Scheduled Tribe (as contended and taken note of in para 7 of the common judgment dated 24.07.2019) does not appear to be correct. It is true that there is a '*non obstante* clause' in sub-section (6) of Section 165 of the Land Revenue Code, to the effect that restrictions could be imposed by the State

Government with regard to the conveyance of properties belonging to 'Aboriginal Tribes' in the manner specified therein. The very same provision makes it clear that:

- it is only in respect of a right of Bhumi Swami belonging to a Tribe;
- which has been declared as 'Aboriginal Tribe';
- such declaration shall be made by the State Government;
- it shall be by way of notification in that behalf (gazette notification).

20. Sub-clause (i) of Section 165(6) of the Land Revenue Code envisages a total prohibition in such areas which are predominantly inhabited by 'Aboriginal Tribes', whereas sub clause (ii) of Section 165(6) deals with other cases than specified in sub-clause (i) and the authority of the Revenue Officer not below the rank of District Collector to give clearance, for the reasons to be recorded in writing. The provision gives a clear idea, that, if the Bhumi Swami is not belonging to a Tribe, no declaration is possible as an 'Aboriginal Tribe' and that too, such declaration in appropriate case has to be by way of gazette notification, issued by the Government. No materials have been produced by the State to show that the Petitioner is a member of a Tribe and no notification of such tribe as an 'Aboriginal Tribe' has been produced before this Court. In the said circumstances, this Court is of the view that, Section 165(6) of the Land Revenue Code cannot place any bar with regard to the right of transaction of the properties belonging to the

Petitioner and the contention to the contrary made from the part of the State stands repelled.

21. The learned Advocate General submits that Annexure P/1 Circular, as mentioned already, is only a 'clarification' of an existing fact and it is quite permissible. Reliance is sought to be placed on the verdict passed by the Apex Court in ***A.S.Nagendra & Others v. State of Karnataka & Others***; (2005) 10 SCC 301. It is pointed out that the question raised there was whether the Tribe "**Maaleru**" and "**Maleru**" were the same. According to the said Petitioners (who sought for issuance of a caste certificate claiming to be a member of Scheduled Tribe "**Maleru**" as notified in the Presidential Order), there was no difference between the two terms but for the difference in the spelling and it described the same notified community existing in the State of Karnataka. Reliance was placed on the 1901 and 1911 census reports and some authoritative text books in support of their contention. According to the State Government, there was a clear distinction between the "**Maaleru**" and "**Maleru**" community and that the community represented by the Petitioners was wrongly seeking to obtain the benefit of the Constitution (Scheduled Tribes) Order, 1950. During the course of hearing, the law declared by the Apex Court in ***Milind*** (supra) was sought to be relied on by the State of Karnataka, but it was tried to be distinguished by the Petitioners pointing out that the Petitioners were not seeking any alteration or amendment of the Presidential Order, but merely an '**interpretation**' of the same. It is almost a similar situation as involved in the present case, submits the learned

Advocate General, adding that such 'interpretation' has been made by the State Government, clarifying it as per Annexure P/1 Circular, and nothing else. What transpired before the Apex Court to the case cited above, will be worthwhile to be probed further; in this context.

22. Obviously, the Apex Court did not accept the contention of the Petitioners that it was only a question of 'interpretation' or that it was a mere instance of difference in spelling between “**Maaleru**” and “**Maleru**”. The Court did not find it fit to extend the benefits of “**Maleru**” notified in the Presidential Order to the Petitioners who were described as “**Maaleru**” in the relevant records. As mentioned in 'paragraph 6' of the judgment, the Apex Court was of the opinion that, the appropriate authority to decide the issue of interpretation of the Presidential Order would be the National Commission for Scheduled Castes and Scheduled Tribes, established under Article 338 of the Constitution, who in turn was directed to look into the matter and submit a report before the Court after hearing all the parties, within six months (Paragraph 7). In other words, the *lis* was not finally decided by the Apex Court in the said case and as such, reliance sought to be placed by the learned Advocate General on the above verdict to sustain and support Annexure P/1 Circular, is unfounded.

23. As mentioned above, since the matter was directed by the Apex Court to be considered by the National Commission for Scheduled Castes and Scheduled Tribes within six months, this Court, wanted to ascertain the subsequent developments through the Registry. In the course of such probe,

it has been brought to our notice that the National Commission took a series of action to gather the basic information to ascertain whether '**Maaleru**' and '**Maleru**' represented two different communities or were of the same community. The enquiry revealed that they were two different communities with distinct social, cultural and religious characteristics. While '**Maalerus**' lived in villages and towns with their traditional occupation as "Temple Servants" not having any characteristics associated with declaration of a community as Scheduled Tribe, the '**Malerus**' (who have been recognized as Scheduled Tribes in the Presidential Order, 1950) lived in forests and on hills with their occupation as hunting and gathering of forest produce. The findings by the team of Officers of the Commission headed by a Member also revealed that:

- (i) The total population of '**Malerus**' as per 1991 Census was less than 2000;
- (ii) '**Malerus**' are non-vegetarians and eat even a chutney (sauce) made from roasted ants collected from the hills;
- (iii) '**Malerus**' are hunters and their economic condition is very poor. During the lean season, they do not have anything to eat and are forced to eat roots and leaves.

24. With the above input data, the Commission recommended that, in view of the low level of literacy, extreme economic backwardness, pre-agriculture level of technology, stagnant and diminishing population and primitive characteristics of the people belonging to the '**Maleru**' community of

Karnataka (already recognized as Scheduled Tribe), by virtue of their being hunters and living in forests and on the hills and subsisting on forest produce including the roots and leaves might be included in the list of **Primitive Tribal Groups** (PTGs). We have also been given to understand that, on coming to note the contents of the report of the Commission, Writ Petition (C) No. 76 of 2003 (**A.S.Nagendra & Others v. State of Karnataka & Others**) which was pending before the Supreme Court and dealt with in (2005) 10 SCC 301 (cited supra) was sought to be withdrawn with liberty to challenge the report of the National Commission. Permission was granted and it was dismissed as withdrawn on 18.04.2013.

25. We need not go any further as to what transpired thereafter, as what is relevant here, is that the indepth study and analysis made by the National Commission revealed that even a minor difference in spelling, when probed properly, may reveal an ocean of difference as in the case of the two communities '**Maaleru**' and '**Maleru**'. The benefits already conferred upon '**Maleru**' (already declared as a Scheduled Tribe in the Presidential Order) cannot be extended to the community called '**Maaleru**' who do not have any characteristics akin to that of '**Maleru**'; merely with reference to the 'phonetic values' of the terms. This being the position, the attempt made by the State Government by issuance of Annexure P/1 Circular, allegedly in the form of 'clarification' in recognition of the phonetic values and holding the relevant names of the tribes as synonymous to those already notified as '**Sawar**, **Sawra**' at serial No. 41 of the Presidential Order, virtually amounts to re-

writing the Presidential Order and it stands against the law declared by the Constitution Bench of the Apex Court in ***Milind*** (supra).

26. It is relevant to note that the erstwhile National Commission for Scheduled Castes and Scheduled Tribes as envisaged under Article 388 of the Constitution was subsequently amended as per the 89th Amendment of the Constitution, confining and re-naming it as National Commission for Scheduled Castes *w.e.f* 19.02.2004. Simultaneously, another provision was introduced as 'Article 338A' giving rise to the 'National Commission for Scheduled Tribes'. Clause (4) of Article 338A provides that the Commission shall have the power to regulate its own procedure; Clause (5) provides for the duties of the Commission; Clause (8) provides that the Commission shall have all the powers of a Civil Court trying a suit and Clause (9) provides that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

27. If the State Government is desirous of making use of the services of the Commission, as above, it is quite open for them to approach the Commission and get necessary inputs and take follow-up steps including by way of recommendations for causing the Presidential Order to be amended by approaching the Central Government again.

28. In the above circumstances, we are of the firm view that Annexure P/1 Circular issued by the State Government is beyond its powers and competence. It stands against the mandate of Article 342 of the Constitution

and the law declared by the Apex Court in ***Milind*** (supra), as noted above. Annexure P/1 Circular dated 30.12.2017 to the extent it has included "सौरा, सौवरा, सौरा, संवरा, सहरा, सेंवरा, सौंवरा" recognizing them as part of the already notified Scheduled Tribe Community 'Sawar, Sawara' at Entry No. 41 of the Presidential Order, 1950 is a transgression into the forbidden field. It is declared as *ultra vires* and is hereby set aside.

29. The writ petition is allowed to the said extent. No costs.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE