

IN HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved On   | 22.08.2019 |
| Pronounced On | 21.10.2019 |

CORAM  
THE HONOURABLE MR.JUSTICE R.SUBBIAH  
AND  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15630 of 2019  
and  
C.M.P.No.15525 of 2019

P.Udhayanilavan

... Petitioner

vs

1. The Secretary,  
Department of Revenue and Disaster Management,  
Government of Puducherry,  
Puducherry.
2. The Deputy Tahsildar,  
Taluk Office, Bahore,  
Puducherry.
3. Centralised Admission Committee (CENTAC),  
Rep. by the Convener, CENTAC,  
Pondicherry Engineering College Campus,  
Pillaichavadi,  
Puducherry - 605 014.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus by calling for the records and quashing the Community Certificate bearing No.2434/TOB/A3/2018 dated 14.05.2018 by the 2<sup>nd</sup> respondent in favour of the petitioner herein and consequently issue a Writ of Mandamus directing the 2<sup>nd</sup> respondent to issue a Community Certificate under the Constitution (Pondicherry) Schedule Castes Order 1964.

For Petitioner

:Mr.V.Vijay Shankar

for Mr.K.Vaiyavi & Umesh Rao K

For Respondent

:Mr.A.Gandhiraj

Government Pleader  
(Puducherry)

O R D E R

C.SARAVANAN, J.

Heard the learned counsel for the petitioner and the Government Pleader (Puducherry).

2.The petitioner has challenged the impugned caste Certificate dated 14.05.2018 bearing reference No.2434/TOB/A3/2018 issued by the 2<sup>nd</sup> respondent under the Constitution (Scheduled Caste) Order, 1950 and for a consequential direction to direct the 2<sup>nd</sup> respondent to issue a caste Certificate under the provisions of the Constitution (Pondicherry) Scheduled Caste Order 1964.

3.Petitioner's father originally hails from Cuddalore District, Tamil Nadu and was issued with a Caste Certificate on 20.09.1989. Subsequently, fresh caste Certificate was issued to the petitioner's father on 14.12.2001 under the provisions of the Constitution (Pondicherry) Scheduled Castes Order, 1964. This certificate has not been cancelled and is subsisting.

4.The petitioner claims to be resident of Puducherry and therefore applied for a caste Certificate. He was issued with the impugned caste Certificate dated 14.05.2018 bearing reference No.2434/TOB/A3/2018 by the 2<sup>nd</sup> respondent under the Constitution (Scheduled Caste) Order, 1950. This was produced by the petitioner before the 3<sup>rd</sup> respondent for the purpose of admission for the academic year 2018-19.

5.The 3<sup>rd</sup> respondent however refused to accept the same stating that the petitioner was not eligible for reservation on the strength of the said certificate as it was not issued under the provisions of the Constitution (Pondicherry) Scheduled Castes Order, 1964 but under the provisions of the Constitution (Scheduled Caste) Order, 1950 and therefore the petitioner cannot be considered for reservations in the Union Territory of Puducherry.

6.According to the petitioner, he was wrongly issued with the caste certificate under the Constitution (Scheduled Caste) Order, 1950 instead of Constitution (Pondicherry) Scheduled Castes Order, 1964.

7.The 2<sup>nd</sup> respondent has filed a counter and stated that the writ petition is liable to be dismissed. According to the 2<sup>nd</sup> respondent, the caste Certificate of the petitioner's father dated 14.12.2001 was not clear and was not traceable and hence its authenticity cannot be accepted and therefore caste certificate cannot be issued to him under the Constitution (Pondicherry) Scheduled Castes Order, 1964 based on his father's caste certificate.

8.It was further submitted that the petitioner's father was a native of Azhagiyanatham Village in Cuddalore District and therefore the petitioner's father himself was not eligible for the caste Certificate under the provisions of the Constitution (Pondicherry) Scheduled Castes Order, 1964.

9.According to the 2<sup>nd</sup> respondent, the petitioner's brother was issued the certificate with the Permanent Integrated Certificate (PIC) bearing No. PY/TOB/A3/61/000 4401 dated 19.06.2017 which clearly indicated that the petitioner's family had migrated from Tamil Nadu as was the case with the petitioner's sister also who was issued with the migration Scheduled Caste certificate bearing No.2434/TOB/A3/2018 dated 14.05.2018.

10.It was therefore submitted that as the petitioner's family was residing in Puducherry only after 1964 Presidential Order was issued based on which Permanent Integrated Certificate (PIC) was recommended to the petitioner's siblings. Therefore, there was no question of issuing a fresh caste certificate to the petitioner under the Constitution (Pondicherry) Scheduled Castes Order, 1964.

11.It was further submitted that the cut-off date for determining the origin/migrant status of the people belonging to the scheduled castes is the date of Presidential notification dated 05.03.1964 and since the petitioner's father had settled in Pondicherry only after the aforesaid date, the petitioner was not entitled to a certificate under the Constitution (Pondicherry) Scheduled Castes Order, 1964.

12.It is the case of the respondent that the petitioner's father was born in the year 1963 was issued with the caste certificate by the 2<sup>nd</sup> respondent under the provisions of the Constitution (Pondicherry) Scheduled Castes Order, 1964 by mistake. It was further submitted that there was no proof that the petitioner's father was born in the Union Territory of Puducherry before 05.03.1964 in absence of any material evidence.

13.It was further submitted that since the petitioner's father was himself not eligible for the certificate under the provisions of the Constitution (Pondicherry) Scheduled Castes Order, 1964. Therefore, caste certificate based on the father's caste certificate cannot be given to the petitioner.

14.The respondents relied upon Letter No.BC-16014/1/82-SC & BCD-1 Government of India/Bharat Sarkar, Ministry of Home Affairs/Grih Mantralaya, Government of India dated 06.08.1984.

As per the above communication Scheduled Castes/Tribes on migration from the state of his origin to another state will be entitled to the concession/benefits only in his State of his origin and not at the State of migration.

15.The learned Government Pleader appearing for the respondents submits that the petitioner's father has submitted a certificate, claiming Schedule Caste (origin) dated 14.12.2001 but its number is not clear. The evidences produced by the petitioner's father at that time were not traceable and hence the authenticity of the certificate is not clear.

16.It was further submitted that from the report issued by the Taluk Tahsildar, Cuddalore it is evident that the petitioner's father was a native of Azhagiyanatham Village, Cuddalore District, Tamilnadu and therefore, the father of the petitioner does not have any proof in favour of his claim that he belongs to Scheduled Caste of Puducherry prior to the cut-off date.

17.In the letter issued by the Tahsildar, Cuddalore Taluk, Tamilnadu vide No.4/1385/2017 dated 17.03.2017 it was stated that petitioner's father Thiru.Padmanaban S/o.Govindan was a resident of Azhagiyanatham Village of Cuddalore District and had migrated to Puducherry only before 20 years. Based on the above mentioned letter, Caste Certificate (Migration) was issued to the petitioner and his siblings.

18.As the petitioner's Udhayabanu had not submitted any proof, it was submitted that she was provided only with Permanent Integrated Certificate (PIC) without caste vide Certificate No.PY/TOIB/61/003095 dated 24/05/2013. Later the petitioner's sister was issued with migration Scheduled Caste Certificate vide No.2434/TOB/A3/2018 dated 14.05.2018.

19.It was further submitted that the petitioner's brother Thiru. Udhayachandran was issued with the Permanent Integrated Certificate (PIC) bearing No.PY/TOB/61/0004401 dated 19.06.2017 which clearly states that they have migrated from Tamil Nadu.

20.It was further submitted that the petitioner and his father are well aware of the fact that they are entitled to only Scheduled Caste (Migration) and that they are not entitled to any reservations that are available to Scheduled Castes of Puducherry. It was therefore submitted that the present writ petition was liable to be dismissed.

21.We have considered rival submissions of the learned counsel for the petitioner and the learned Government Pleader.

22. Under Article 341 (1) of the Constitution of India the President of India may by a public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of the Constitution be deemed to be Scheduled Castes in relation to the State or Union Territory as the case may be. Before issuing notification, the President of India has to consult the Governor of the State or Union Territory.

23. The Hon'ble Supreme Court in *Bhaiya Lal vs Harikishan Singh*, AIR 1965 SC 1557 held as under:-

10. .... The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question.

24. For the Union of Puducherry (formerly Pondicherry), the President issued Constitution (Pondicherry) Scheduled Castes Order, 1964 on 05.03.1964. In the said order, the President of India has notified the communities under the aforesaid provision of the Constitution of India. The text of Constitution (Pondicherry) Scheduled Castes Order, 1964 reads as under:-

"THE CONSTITUTION (PONDICHERRY) SCHEDULED CASTES  
ORDER, 1964  
(C.O. 68)

In exercise of the powers conferred by clause (1) of Article 341 of the Constitution of India, the President is pleased to make the following Order, namely-

1. The Order may be called the Constitution (Pondicherry) Scheduled Castes Order, 1964.

2. The castes, races or tribes or parts of or groups within castes, races or tribes specified in the Schedule to this Order shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union Territory of Pondicherry so far as regards members thereof resident in that Union Territory:

Provided that no person, who professes a religion different from the Hindu or the Sikh religion, shall be deemed to be a member of a Scheduled Caste.

THE SCHEDULE

- |                     |                       |
|---------------------|-----------------------|
| 1. Adi Andhra       | 9. Pallan             |
| 2. Adi Dravida      | 10. Parayan, Sambavar |
| 3. Chakkiliyan      | 11. Samban            |
| 4. Jambuvulu        | 12. Thoti             |
| 5. Kuruvan          | 13. Valluvan          |
| 6. Madiga           | 14. Vetan             |
| 7. Mala, Mala Masti | 15. Vettiyan          |
| 8. Paky             |                       |

25.The expression used in the said Presidential Order is "so far as regards members thereof resident in that Union Territory".

26.The Government of India has also issued guidelines from time to time with regard to issuance of community certificate to person belonging to Scheduled Castes.

27. In so far as grant of community certificate to migrants is concerned, the Government of Puducherry, vide Circular No.9330/82/J, dated 05.04.1983 had clarified as under:-

"4. The request of the Sangam has been examined in the light of the instructions of the Government of India on the subject. The important instructions are reproduced below:-

- i. The person and his parents actually should belong to the community claimed and that the community should be included in the Presidential orders vide the Constitution (Pondicherry Scheduled Caste Order 1964) issued in GSR 419 dated 5th March, 1964.
- ii. The person should belong to the State in respect of which the community has been scheduled.
- iii. He should profess either Hindu or Sikh religion;
- iv. Where a person has migrated from one State to another, he can claim to belong to a Scheduled caste only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated.
- v. The residence for the purpose is not to be understood in the literal or ordinary sense of the word. On the other hand, it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled caste if his caste has been specific in that order in relation to his state. But he cannot be treated as such in relation to the place of his temporary residence

notwithstanding the fact that the name of his caste has been scheduled in respect of that area in any Presidential Order. It is to ensure the veracity of this permanent residence of a person and that of the caste to which he claims to belong, the Government of India have made a special provision in the proforma prescribed for issue of such community certificate.

vi. The Government of India have advised that such certificates should be issued only by the revenue authorities.

vii. Before 18<sup>th</sup> November 1982, children of Scheduled caste persons who have migrated from one state to another have to obtain community certificates from the authorities of the State from which they (or their parents) have migrated. This position has changed from 18<sup>th</sup> November 1982. Government of India have stated that the prescribed authority of the State Government may issue certificate to a person who has migrated from another state on the production of genuine certificates issued to his father/mother by the prescribed authority of the State of father's/mother's origin except where the prescribed authority feels that detailed enquiry is necessary, through the State of original irrespective of the fact whether the caste in question is scheduled or not in relation to the State to which the person has migrated. The form of the certificate has also been suitably modified by the Government of India." (emphasis added).

28. Vide letter dated 6<sup>th</sup> August 1984 bearing reference No. BC/16014/1/82-SC & BCD-1, Government of India/Bharat Sarkar, Ministry of Home Affairs had earlier issued a clarification to all State Government and U.T. Administrations. There, it was clarified that the Scheduled Caste/Tribe person on migration from the State of his origin to another will be entitled to the concessions/benefits to the Scheduled Caste/Tribe in the State of his origin only and not at the State where he has migrated.

29. In the Union Territory of Puducherry, a Permanent Integrated Certificate is issued to students who undertake their 10<sup>th</sup> Standard Examinations, through their respective school, on production and verification of the requisite documents. This certificate contains a photograph of the applicant along with details required for their higher studies, such as, residence, nationality, caste/community and income.

30. In *S. Pushpa and Puducherry Scheduled Caste People Welfare Association vs. Shivachanmugavelu and Ors*, (2005) 3 SCC 1. the issue was whether there was any infirmity in the policy adopted by the Government of Pondicherry while extending the benefit of reservation to the migrant Scheduled Castes in the matter of Public Employment.

31. The Hon'ble Supreme Court after perusing the circulars, the Government order and the Government Policy held that the Government of Puducherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation of Scheduled Castes/Scheduled Tribes in respect of posts/services under the Central Government are applicable to the posts/services under the Pondicherry Administration as well.

32. The Hon'ble Supreme Court in para 15.2 of *S. Pushpa* extracted the circular dated 6<sup>th</sup> January 1993 wherein it was observed that however in case of other benefits like scholarships, admission to educational institutions etc., the benefits should be confined to the Scheduled Castes of this Union Territory. The Hon'ble Supreme Court ultimately in paragraph Nos. 21 and 22 held as under:-

21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order

issued for a particular State alone would be recognised as backward classes of citizens and none else. If a State or Union Territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT of Pondicherry having adopted a policy of the Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

22. For the reasons discussed above, we are of the opinion that 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.

33. Somewhat similar issue in Pushpa's case came up before this Court in W.A.No.1225 of 2015 [The Pondicherry Scheduled Caste People's Welfare Association vs Union of India and Others], W.A.No.1257 of 2015 [Minor. K.R. Shanmuheshwar vs Union of India and Others] and W.P.No.19558 of 2015 [Sunitha vs State rep. by Secretary to the Government, Union Territory of Pondicherry, Pondicherry].

34. This Court concluded that the decision of the Hon'ble Supreme Court in S. Pushpa is not an authority for the proposition that those who migrated from other States after the Presidential Order are also entitled to be treated as Scheduled Castes of the State/Union Territory. Finally, it was held as under:

26. We reiterate the legal position that where a Scheduled Caste person migrates from one State or Union Territory to another, he can claim to belong to the Scheduled Caste or Scheduled Tribe only in relation to the State/Union Territory from which he has migrated.

35. Further appeal filed before the Hon'ble Supreme Court vide SLP (c).No27612 of 2015 by the Pondicherry Scheduled Caste People's Welfare Association was dismissed by an order dated 24.09.2015.

36. In another case, the Division bench of this Court in W.P.No.12920/2004 vide letter dated 22.09.2017 [M.Panchatcharam vs Union of India, rep.by Government of Pondicherry & Another] held that a person who was born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the Constitution (Pondicherry) Scheduled Castes Order, 1964, would be entitled to obtain the Scheduled Caste Certificate from the prescribed authority of Union Territory of Pondicherry in terms of Letter No.BC.16014/1/82/SC & BCD-1 dated 22.02.1985 of the Government of India. It was held as follows:-

7. In view of the aforesaid legal position set out supra, the Writ Petition is disposed holding that persons who have been born and brought up in the Union Territory of Pondicherry whose caste have been notified as Scheduled Caste in the Constitution (Pondicherry) Scheduled Castes Order, 1964, would be entitled to obtain the Scheduled Caste Certificate from the prescribed authority of Union Territory of Pondicherry in terms of Letter No.BC-16014/1/82-SC & BCD-I, dated 22.02.1985 of the Government of India and that if their ancestors and forefathers had migrated to the Union Territory of Pondicherry only after 05.03.1964, they will be deemed to be a Scheduled Caste of the State of their origin and will be entitled to derive benefits from the State of their origin and not from the Union Territory of Pondicherry. No costs.

37. In Marri Chandra Shekhar Rao vs Dean, Seth G.S. Medical College and others, (1990) 3 SCC 130, which was rendered by a bench consisting of five judges, considered the question as to whether a person who is recognised as a Scheduled Tribe in the

State of his origin and birth can continue to enjoy the benefits/privileges or rights in the State of migration or to a place where he goes later?

38. There the petitioner belonged to Scheduled Tribe Goudu (Goud) Community which is a recognized Schedule Tribe Community in the State of Andhra Pradesh 'Scheduled Tribe' in the Constitution (Scheduled Tribes) Order, 1950. However, that community was not recognized as a Scheduled Tribe Community in Maharashtra.

39. The petitioner claimed reservation for medical seat based on the aforesaid status in Maharashtra since his father had migrated with his family to Maharashtra in connection with his employment. Reservation was denied to the petitioner there and therefore he could not be admitted to the MBBS course in either the medical colleges run by the Bombay Municipal Corporation or by the State of Maharashtra, though Scheduled Tribes candidates from the State of Maharashtra who had secured lesser marks than him were admitted. The reason for denial of admission to the petitioner was that he was not entitled to claim reservation based on his status from the place of origin.

40. While, ruling out reservation for a person who has migrated from one State, it was stated that where migration is involuntary or by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State without prejudicially affecting the rights of the scheduled castes or scheduled tribes in those States or areas, any facility or protection for continuance can be given subject to law to be enacted.

41. The decision of the Hon'ble Supreme Court in Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College and others, (1990) 3 SCC 130 is premised on the footing that "The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country."

42. To answer the question whether a member of the Scheduled Caste in one part of the country who migrates to another State or any other Union territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated, the Court observed as under:-

That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole."

43. Disposing of the Writ Petition, the Hon'ble Supreme Court held that the petitioner therein was not entitled to be admitted to the Medical College as he belongs to Scheduled Tribe only in his original State of Andhra Pradesh and not in the State of Maharashtra. In para 10, it was observed as follows:-

10. .... 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 part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary 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 other communities. This must be the basic approach to the problem.

44. The Court there also held that as follows:-

"Preventing a scheduled tribe candidate of Andhra Pradesh 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 Andhra Pradesh 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.

45. In para 13, the Court observed as under:-

"13. .... The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere of Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Articles 341 read with Article 15(4) of the Constitution."

46. In Para 23, it was also observed as under:-

23. Having construed the provisions of Article 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those scheduled caste and scheduled tribe students who get the protection of being classed as scheduled caste or scheduled tribes in 'the States of origin when, because of transfer or movement of their father or guardian's business

or service, they move to other States as a matter of voluntary transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to other is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the scheduled castes or scheduled tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has so migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to scheduled castes and scheduled tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration.

47. Finally, the Court in para 24 considered the hardship of the petitioner therein and granted relief. Para 24 reads as under:-

24. Having so held, now the question is, as to what is to happen to the petitioner in this case. As we have held, 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. The petitioner has, however, been admitted. He has progressed in his studies. But he had given an undertaking that he will not insist on the basis of the admission. If we allow him to continue with his studies in Maharashtra's college where he has been admitted on the undertaking given after he has not succeeded in this application, it would be a bad precedent. We must, however, do justice. The boy's educational prospects should not be jeopardised since he has progressed to a certain

extent and disqualifying him at this stage or this year on the ground that he is not entitled to the protection of Scheduled Caste or Scheduled Tribe, would not confer any commensurate benefit to Scheduled Castes or Scheduled Tribes in Maharashtra or for that matter on anybody else. It is, therefore, desirable that the question whether he is genuinely belonging to Gouda community and whether this community is a Scheduled Caste or Scheduled Tribe, should be first properly and appropriately determined. As mentioned hereinbefore, we have not examined this question. After determining that whether after making provisions for the Scheduled Castes and Scheduled Tribes of Maharashtra, if any facility of admission or continuance of study can be given in the Medical College in Maharashtra to the petitioner herein, the authorities in charge of the institution should consider the same and if on that considering they find it justified in allowing the petitioner to continue in his studies, they may do so. The authorities should consider the same and take action accordingly, as expeditiously as possible. In considering the question of the petitioner continuing his medical educational, the appropriate authorities should bear in mind the justice of the situation. We, therefore, leave it to the authorities to take appropriate action about the continuance or discontinuance of the petitioner in his studies on the basis of the aforesaid consideration. We order accordingly. We do so only in the background of the peculiar facts and circumstances of this case, and the aforesaid observations should not be treated as a precedent for other situations.

48. This Court in W.P.Nos.33305 and 33306 of 2006 [Puducherry S.C., People Welfare Association vs Chief Secretary to Govt. Union Territory of Pondicherry and Ors] was concerned with the correctness of the following two G.O 's issued by Government of Puducherry. Relevant portion of the two G.O's are extracted as under:-

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| Para 5 of GOM 11/2005 dated 5.08.2005                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Para 5 of GOM 12/2005 dated 5.08.2005                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>"Having examined the demand made by various Welfare Associations and Scheduled Caste (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11-2-2005 [(2005) 3 SCC 1 : 2005 SCC (L&amp;S) 327] , the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in promotion, employment to Group C and D posts shall henceforth be extended only to the Scheduled Caste origins of the Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)."</p> | <p>"Having examined the demand made by various Welfare Associations and Scheduled Caste (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11-2-2005 [(2005) 3 SCC 1 : 2005 SCC (L&amp;S) 327] , the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in the field of education and welfare shall henceforth be extended only to the Scheduled Caste origins of this Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)."</p> |

49. Ultimately, this Court in its order dated 21.07.2008 in W.P.Nos.33305 and 33306 of 2006 held that the Government of Pondicherry may not extend such discretionary power to the Scheduled Castes/Scheduled Tribes who are recognised as such in relation to other State and may limit the reservation only to the Scheduled Castes/Scheduled Tribes of the Union Territory of Pondicherry. Para 24 held as under:-

24. From the judgment as referred to above, it would be clear that though the Government of Pondicherry has no jurisdiction to amend or alter the Presidential Order issued under Articles 341 and 342 of the Constitution of India, but it has powers to make a provision extending the benefit of reservation to a Scheduled Caste/Scheduled Tribe, which has been recognised as such in relation to other State or

other Union Territories, apart from the Scheduled Caste/Scheduled Tribe of the Union Territory of Pondicherry. The corollary is that the Government of Pondicherry may not extend such discretionary power to the Scheduled Castes/Scheduled Tribes who are recognised as such in relation to other State and may limit the reservation only to the Scheduled Castes/Scheduled Tribes of the Union Territory of Pondicherry.

50.While coming to the above conclusion, this Court had considered various Government Orders referred by the respondents in their counter including D.O. Letter No.14016/2/74-GP, dated 4.2.1974, wherein the following instruction was issued:-

"So far as reservation for Scheduled Castes/Tribes candidates in posts/services under the Central Government are concerned, the concession is admissible to all Scheduled Castes and Scheduled tribes which have been recognised as such under the orders issued from time to time irrespective of the State/Union Territory in relation to which particular castes or tribes have been recognised as Scheduled Caste/Scheduled Tribe. Thus for a reserved vacancy in a Central Government office located in a State, any scheduled Caste candidate throughout the country would be eligible. Since Pondicherry is a Union Territory, all orders regarding reservation for Scheduled Castes/Tribes issued by the Department of Personnel in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration also, as such a Scheduled Caste/Tribe candidate from outside Pondicherry would also be eligible for a vacancy reserved for Scheduled Caste/Tribes in the U.T. Administration."

51.The aforesaid letter dated 4.2.1974 was circulated by the Government of Pondicherry, vide G.O.Ms.No.24, dated 16.2.1974 issued from the General Administrative Department, with the following guidelines:

"3.In view of the clarifications of the Government of India, all Secretariat Department, Heads of Departments/Offices are informed that Scheduled Castes/Tribes candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for Scheduled Castes/Tribes in this Administration. These instructions should be followed strictly."

52.As is evident from a reading of the said Judgment, the Circular No.9330/82/J, dated 05.04.1983 issued by the Government of Puducherry was not considered, wherein it was clarified that "before 18<sup>th</sup> November 1982, children of Scheduled caste persons who have migrated from one state to another have to obtain community certificates from the authorities of the State from which they (or their parents) have migrated. This position has changed from 18<sup>th</sup> November 1982. Government of India have stated that the prescribed authority of the State Government may issue certificate to a person who has migrated from another state on the production of genuine certificates issued to his father/mother by the prescribed authority of the State of father's/mother's origin except where the prescribed authority feels that detailed enquiry is necessary, through the State of original irrespective of the fact whether the caste in question is scheduled or not in relation to the State to which the person has migrated. The form of the certificate has also been suitably modified by the Government of India." (emphasis added)."

53.The Hon'ble Supreme Court has however reversed the view of this Court in [Puducherry S.C., People Welfare Association vs Chief Secretary to Govt.Union Territory of Pondicherry and Ors, 2014 (9) SCC 236] with the following observation:-

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, 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 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.

54.As per the decision of the Hon'ble Supreme Court in Puducherry S.C., People Welfare Association vs Chief Secretary to Govt.Union Territory of Pondicherry and Ors., 2 Puducherry S.C., People Welfare Association vs. Chief Secretary to Govt. Union Territory of Pondicherry and Ors 2014 (9) SCC 236, a resident of Union Territory of Pondicherry will be entitled to the benefit of reservation in Puducherry, if the person belongs to one of the specified community in the Constitution (Pondicherry) Scheduled Caste Order 1964.

55.The Court held that the stand of the respondent is contrary to the express language in Constitution Pondicherry (Scheduled Case), 1964.

56.Earlier, in Subhash Chandra vs Delhi Subordinate Services Selection Board, (2009) 15 SCC 458 also it was observed as under:-

"69. Both the Central Government and the State Government indisputably may lay down a policy decision in regard to reservation having regard to Articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions. A policy cannot have primacy over the constitutional scheme. If for the purposes of Articles 341 and 342 of the Constitution of India, State and the Union Territory are on a par on the ground of administrative exigibility (sic) or in exercise of the administrative power, the constitutional interdict contained in clause (2) of Article 341

or clause (2) of Article 342 of the Constitution of India cannot be got rid of.

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75. 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 clause (1) of Article 341 as also that of Article 342 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 clause (2) thereof must be resorted to."

57. In *Bir Singh vs Delhi Jal Board and Ors*, (2018) 10 SCC 312 the question was referred to a Bench of 5 Judges of the Hon'ble Supreme Court as to whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled to or not to the benefits or concessions allowed to Scheduled Caste candidate in the matter of employment, in any other State? By majority it held as follows:-

30. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'.

58. The majority view authored by the Hon'ble Chief Justice was concurred by the Hon'ble Mrs. Justice R. Banumathi in her separate opinion relevant portion of which reads as under:

Reference order

I have gone through the judgment proposed by His

Lordship Ranjan Gogoi, J. I agree with the following conclusions arrived at in paras 34 and 38 and the reasonings thereon.

"A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A' ....".

"... It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/ Scheduled Tribes enumerated in the Presidential Orders for a particular State/Union Territory within the geographical area of that State/Union Territory (Union Territory added by me) and not beyond."

With due respect, I do not agree with the conclusion arrived at in para 61 and the reasoning thereon.

"... So far as the National Capital Territory of Delhi is concerned the pan-India Reservation Rule in force is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories."

59. Ultimately, Hon'ble Mrs. Justice R. Banumathi in her concurring view observed as under:

75. It is the responsibility of each State/Union Territory to provide for such reservation/affirmative action by positive discretion to bring Backward Classes/Scheduled Castes and Scheduled Tribes in the respective States/areas to provide socio-economic empowerment. If the reservation to the Scheduled Castes and Scheduled Tribes are to be extended to all categories of Scheduled Castes and Scheduled Tribes all over India or to the migrants then there is every possibility of the Scheduled Castes and Scheduled Tribes of other developed States and Union Territories squandering reservations to the Scheduled Castes and Scheduled Tribes who are disadvantaged in the respective States/Union Territories including Union Territory of Delhi. If this is permitted, it would defeat the very object of providing reservation to the disadvantaged Scheduled Castes and Scheduled Tribes in a

particular State or Union territory. The enabling provision of Article 16(4) of the Constitution has to yield to the constitutional scheme of Articles 341 and 342 of the Constitution.

60.The decision of the Hon'ble Supreme Court in above case is inspired from the decision of the Hon'ble Supreme Court in Marri Chandra Shekhar Rao vs Seth G.S. Medical College, (1990) 3 SCC 130 wherein entire gamut of case laws were considered.

61.The upshot from the discussion appears to be that a person whose community is recognised as a scheduled caste or a scheduled tribe community in the state of his origin on migration to another state will not be entitled to reservation in the state of migration, if such community is not recognized as a Scheduled Caste or Scheduled Tribe in the migrating state.

62.If a community in the state of migration is not a reserved community, reservation cannot be claimed as a matter of right except under the circumstances recognised by the honourable Supreme Court in Marri Chandra Shekhar Rao vs Seth G.S. Medical College, (1990) 3 SCC 130 as affirmed in Bir Singh vs Delhi Jal Board and Ors, (2018) 10 SCC 312.

63.As far as reference to the Constitution (Scheduled Caste) Order, 1950 in the impugned certificate was concerned, it is obviously not correct as Community Certificate for persons residing in Puducherry can be issued only under the Constitution (Scheduled Caste) Order, 1964.

64.As per Constitution Pondicherry (Scheduled Case), 1964, castes, races or tribes or parts of or groups within castes, races or tribes specified in the Schedule to the Order shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union Territory of Pondicherry so far as regards members thereof resident in that Union Territory.

65. Thus, the denial of community certificate to the petitioner on the ground that the petitioner's father was not a person whose origin from Pondicherry appears to be incorrect and only skewed reading of the decision of the Hon'ble Supreme Court in *Marri Chandra Shekhar Rao v. Seth G.S. Medical College*, (1990) 3 SCC 130 and *Bir Singh vs Delhi Jal Board and Ors*, (2018) 10 SCC 312. Such denial would be contrary to express language of the Constitution (Pondicherry) Scheduled Caste Order 1964 and contrary to the view of the Hon'ble Supreme Court in *Puducherry S.C., People Welfare Association vs Chief Secretary to Govt. Union Territory of Pondicherry and Ors*, 2014 (9) SCC 236.

66. In paragraph 65, the Hon'ble Supreme Court in *Chairman and Managing Director, Food Corporation of India and others vs Jagdish Balaram Bahira and others*, (2017) 8 SCC 670 held as follows:-

65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of

genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.

67. In the light of the above discussion, we are of the view that the denial of the Scheduled Caste community certificate under the provisions of the Constitution (Pondicherry) Scheduled Caste Order 1964 to the petitioner is not in accordance with law.

68. Therefore, the certificate given to the petitioner under the Constitution (Scheduled Caste) 1950 is not correct.

69. However, whether the petitioner indeed belongs to the Scheduled Caste Community or not as notified under the Constitution (Pondicherry) Scheduled Caste Order, 1964 has to be verified by the Authorities concerned.

70. It is made clear that it is the status as a resident and not status of the origin of a citizen that is relevant for issue of Community Certificate under the Constitution (Pondicherry) Scheduled Caste Order 1964. Whether the petitioner's father migrated before or after on 05.03.1964 is of no significance as 'Hindu Adi Dravidar' Community is a Scheduled Caste Community both under the Constitution (Pondicherry) Scheduled Caste Order 1964 and under the Constitution (Scheduled Caste) 1950.

71. Therefore, we direct the Authorities concerned to verify the genuineness of the petitioner's claim that the petitioner indeed belongs to 'Hindu Adi Dravidar' Scheduled Caste Community. If that be so the petitioner should be issued with a 'Hindu Adi Dravidar' Scheduled Caste Community Certificate under the Constitution (Pondicherry) Scheduled Caste Order 1964.

72. Therefore, the case is remitted back to the 2<sup>nd</sup> respondent to complete the said exercise. In case the petitioner indeed belongs to 'Hindu Adi Dravidar' Scheduled Caste Community, the 2<sup>nd</sup> respondent shall issue a certificate to the petitioner within a period of four weeks from the date of receipt of a copy of this order under the Provisions of the Constitution (Pondicherry) Scheduled Caste Order, 1964.

73.The writ petition stands disposed and the case is remitted back to the 2<sup>nd</sup> respondent. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary,  
Department of Revenue and Disaster Management,  
Government of Puducherry,  
Puducherry.
2. The Deputy Tahsildar,  
Taluk Office, Bahore,  
Puducherry.
3. The Convener, CENTAC,  
Centralised Admission Committee (CENTAC),  
Pondicherry Engineering College Campus,  
Pillaichavadi,  
Puducherry - 605 014.

+1 CC to M/s.K. Vaiyavi, Advocate sr 87832.

+1 CC to The Govt. Pleader sr 87955.

सत्यमेव जयते

W.P.No.15630 of 2019  
and

C.M.P.No.15525 of 2019

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NMI (CO)  
SP(29/11/2019)