

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12295/2018

PETITIONER : Aruna d/o Shivraj Anumula @ Aruna
w/o Vitthal Kudmulwar,
Age : 50 years, Occu. : Housewife,
R/o Kundalwadi, Tq. Biloli, Dist. Nanded.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra
Through its Secretary, Social Welfare
Department, Mantralaya,
Mumbai – 32.
2. The SC VJNT, OBC and SBC
District Caste Certificate Scrutiny
Committee Nanded, (Through its
Member-Secretary)Opp. Dnyanmata
English Medium School Maltekadi
Road, Nanded.
3. The Sub-Divisional Officer,
Biloli, Nanded.
4. Archana w/o Bhimrao Patankar,
Age : Major, R/o Kundalwadi,
Tq. Biloli, Dist. Nanded.
5. Municipal Council, Kundalwadi,
Through its Chief Officer,
Kundalwadi, Tq. Biloli, Dist. Nanded.

Miss. P.S. Talekar, Counsel h/f Shri S.B. Talekar, Counsel for petitioner
Mr. S.B. Narwade, AGP for respondent nos.1 to 3
Mr. S.S. Thombre, Counsel for respondent no.4

WITH

WRIT PETITION NO.1753/2019

PETITIONER : Archana Bhimrao Patankar,
Age 28 years, Occ. Service,
R/o Kundalwadi, Tal. Biloli
District Nanded.

...VERSUS...

- RESPONDENTS :**
1. The State of Maharashtra
Through its Principal Secretary, Social
Welfare Department, Mantralaya,
Mumbai – 32.
 2. The SC VJNT, OBC and SBC
District Caste Certificate Scrutiny
Committee Nanded, Through its
Secretary, Opp. Dnyanmata
English Medium School, Maltekadi
Road, Nanded.
 3. The Sub-Divisional Officer,
Biloli, Nanded.
 4. Municipal Council, Kundalwadi,
Through its Chief Officer,
Kundalwadi, Tq. Biloli, District Nanded.
 5. Aruna D/o Shivraj Anumula @
Aruna W/o Vitthal Kudmulwar,
Age 50 years, Occ. Housewife,
R/o Kundalwadi, Tal. Biloli,
District Nanded.

Mr. S.S. Thombre, Counsel for petitioner

Mr. S.B. Narwade, AGP for respondent nos.1 to 3

Miss. P.S. Talekar, Counsel h/f Shri S.B. Talekar, Counsel for respondent no.5

CORAM : S.V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.

Date of reserving the order : 13/12/2019

Date of pronouncing the order : 16/06/2020

ORDER : (PER : AVINASH G. GHAROTE, J.)

1. The petitioner in Writ Petition No.12295 of 2018 Smt. Aruna Kudmulwar, assails the order dated 22/10/2018, of the Scrutiny Committee in which, though by a majority decision the petitioner is held as belonging to the Caste 'Munnur Kapu' (SOBC), however in light of the proviso to Rule 14 of the Maharashtra Scheduled Castes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules 2012 (Caste Certificate Rules 2012, hereinafter for short), have refused to verify the caste certificate, as issued to the petitioner. The petition also further seeks directions against the respondents not to disqualify the petitioner as a President of Municipal Council. The petitioner in Writ Petition No.1753 of 2019 Smt. Archana B. Patankar, is the objector in W.P. 12295/2018 and assails the same order dt.2210/2018, passed by the Committee to the extent of the observations of the President and the Member Secretary of Respondent-Committee, which is minority view.

2. The petitioner in Writ Petition No.12295 of 2018 was elected as a President of a Municipal Council, Kundalwadi, Taluka Biloli. The case of the petitioner is that the petitioner had migrated

to the State of Maharashtra in the year 1987, after her marriage. She belongs to Munnur Kapu caste. The said caste was included in NTB category, for the first time, under notification (Government Resolution) dated 30.01.2014. Earlier thereto the said caste was included as SBC under Government Resolution dated 07.12.1994.

3. It is contended that the forefathers of the petitioner belonged to Nanded District. The father of the present petitioner shifted to Hyderabad for the purpose of service in 1960, where the petitioner was born and completed her education. The petitioner got married to Vitthal Kudmulwar on 24/5/1987 and thus came to reside in her matrimonial home. Munnur Kapu, the caste to which the petitioner belongs was a backward class in the State of Andhra Pradesh. On the basis of the caste certificate issued to the petitioner by the Tahsildar, Mandal Amberpet, Hyderabad (Now Telangana). The S.D.M., Biloli, District Nanded issued a caste certificate on 22/11/2016 to the petitioner in FORM – 10 as prescribed under Rules 6 (1) (a) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012. According to Ms. Talekar, the learned counsel for the petitioner in Writ Petition No.12295 of 2018, the relevant date to be considered for a person to get the caste certificate and the benefit of the said caste is the date of notification, pursuant to which the said caste is included in a particular reserved category. The petitioner has obtained the caste certificate of NTB Munnur Kapu on 22.11.2016 and his caste was

included in NTB category for the first time in the year 2014. In view of that, even if the case of the Committee is accepted that the petitioner has migrated in 1987 as such the petitioner is entitled for the benefit of the said caste. The learned counsel relies on the judgment of the Apex Court in the case of ***Sau. Kusum Vs. State of Maharashtra reported in (2009) 2 SCC 109***. The learned counsel further submits that the judgment of the full Bench of this Court in the case of ***Shweta Santalal Lal Vs. State of Maharashtra reported in (2010) 2 Mh.L.J.904*** would not go against the petitioner. The said case was dealing with the Presidential Orders in respect of Scheduled Caste and Scheduled Tribe. The learned counsel submits that the question framed itself was such that a person residing in the State of Maharashtra on the date of the notification would be entitled for the benefit of the reserved caste. The learned counsel submits that the Committee ought to have issued validity to the petitioner. The learned counsel also relies on the circulars issued by the Election Commission dated 20.09.2001 and 28.11.2016. The learned counsel further relies on the Transfer Certificate dated 21.03.1995 to contend that the admission was taken in July 1990.

4. Mr. Thombre, the learned counsel for the petitioner in Writ Petition No.1753 of 2018 is advancing the contrary position and submits that there is nothing on record to show that the said candidate had migrated in the State of Maharashtra in the year 1987. The said candidate, on 15.11.2016, obtained the caste certificate of Munnur Kapu from Telangana State. This itself shows that even at that time she was not resident of the State of

Maharashtra. The learned advocate refers to Rule 6 of the Maharashtra Scheduled Castes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules 2012 and submits that the caste certificate cannot be issued to a person who has migrated to State of Maharashtra after the deemed date. The 'deemed date' is defined under Rule 2(e) of the said Rules. The dates are also defined. In view of above, the circulars relied by the petitioner will not have any effect as the deemed date is already notified in the Rules. The learned counsel relies on the judgment of Apex Court in case of ***Bir Singh V Delhi Jal Board and others reported in (2018) 10 SCC 312*** and submits that the Constitution Bench of the Apex Court has concluded that the person who is recognized as a member of Scheduled Caste / Scheduled Tribe in its original State will be entitled to the benefits of reservation in that State only and is not entitled to the benefit of reservation in the migrated State. The learned counsel also relies on the judgment of the full Bench of this Court in case of ***Shweta Santalal Lal Vs. State of Maharashtra reported in (2010) 2 Mh.L.J.904*** to contend that the person must be ordinary resident on the date of the presidential notification in the geographical area from which the person claims the benefit. He also relies on the judgment of the Apex court in case of ***Ranjana Kumari Vs. State of Uttaranchal (2013) 14 SCC 710***. The said judgment has also referred to the judgment of Three Judges Bench of the Apex Court in the case of ***Marri Chandra Shekhar Rao***

wherein the Apex Court has held that the judgment would apply and the person would not be entitled for the benefit of reservation from the migrated State.

5. Miss. Talekar, learned counsel for the petitioner further relies upon:

(a) ***Sudhakar Vithal Kumbhare Vs. State of Maharashtra (2004) 9 SCC 481*** to contend that tribe belonging to a region bifurcated between two States on States reorganisation, can be given benefit of both States on migration as degree of disadvantage in both areas is similar.

(b) ***Radhabai Charansingh Chaware Vs. State of Maharashtra 2008 Supp Bom.C.R.398***, to contend that the relevant date would not be the date of migration, but the date of inclusion of the caste in the Schedule.

(c) ***Preeti Gopalrao Kamble Vs. State of Maharashtra 2013(2) Mh. L.J. 317*** to contend that a person who has shifted from such area of another State that prior to reorganisation was part of the same State where he has now shifted shall not be refused to be issued caste validity certificate.

(d) ***Purushottam Babul Gurde Vs. State of Maharashtra (2017) SCC online Bom.6498***, to contend that the date of migration and issue regarding reorganisation of States are relevant considerations while deciding status as migrant;

6. Mr. Thombre, learned counsel further places reliance upon ***Chetna Rajendra Tank Vs. Committee for Scrutiny of Caste Certificates (2005) 6 BCR 920***, to contend that mere fact of marriage of a person belonging to the same caste or any other reserved caste is of no consequence as marriage would not alter the legal position in so far as caste is concerned, which is acquired by both and such a person will be entitled to the benefits of reservation

in the State of origin and not in the State where she / he has migrated for any reason either by marriage or for education /employment etc.

7. The issue of affording reservations to migrants, has been a vexed issue since long and has had a checkered history. The issue was initially considered by Three Judge Bench of the hon'ble Apex Court in ***Marri Chandra Shekhar Rao Vs Dean Seth G.S. Medical College (1990) 3 SCC 130***. In this case, the petitioner who was born in the State of Andhra Pradesh belonged to "Goudu" community which was recognized as "Scheduled Tribe" in the Constitution (Scheduled Tribes) Order 1950. The father of the petitioner who had been issued a scheduled tribe certificate, on its basis, was appointed in the Fertilizer Corporation of India in the Scheduled Tribes quota on 17/10/1977. On 19/6/1978, the petitioner's father joined R.C.F. and was stationed at Bombay, as a result of which the petitioner came to reside in Bombay in the State of Maharashtra since the age of nine. After completing his initial education, the petitioner applied for admission to medical college at Bombay and sought to avail the benefit of reservation of seats in favour of the Scheduled Tribes which was denied on the ground that the petitioner was not entitled, in the State of Maharashtra to the Scheduled Tribes status of his State of origin (Andhra Pradesh). The question therefore which fell for consideration was whether the petitioner could claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had a scheduled tribe certificate in the State of Andhra Pradesh. After considering the provisions of

Articles 341 and 342 of the Constitution in the context of Article 14, 15 of the Constitution it was held as under :

“13. -----. It, however, appears to us that the expression ‘for the purposes of this Constitution’ in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates.

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 or 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 Article 341 read with Article 15(4) of the Constitution.

(emphasis supplied)

It would thus be apparent that the Three Judge Bench of the hon'ble Apex Court in ***Marri Chandra Shekhar Rao*** (Supra) rendered a clear and specific finding that a migrant from one State to another, would not carry the benefit of reservation from the State of his origin to the State of his migration, which may be for any reason whatsoever. It is however pertinent to note that the Hon'ble Apex Court in ***Marri Chandra Shekhar Rao*** (Supra) was not oblivious to the plight of involuntary migration, due to transfer, or movement of their father or guardian's business or service, in the context of which, the following was observed :

“23. ----- Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another 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 or 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.”

(emphasis supplied)

Thus the question of carrying forward the rights as to reservation, in the State of origin, to the State of migration, was, clearly within the legislative domain and not within the purview of any enactment, as found by the hon'ble Apex Court in ***Marri Chandra Shekhar Rao*** (supra).

8. The matter thereafter, came up for consideration of the Constitution Bench in the case of ***Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another Vs. Union of Indian and another,***

reported in *(1994) 5 Supreme Court Cases 244*, in which the question under consideration was as under :

“Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B ?

The grievance sought to be projected in this petition, which has been brought in a representative capacity and by way of a Public Interest Litigation, is that State B denies the benefits and privileges admissible to such persons belonging to Scheduled Castes and Scheduled Tribes who have migrated from State A or any other State.”

Answering which, after considering *Marri Chandra* (supra), it was held as under:

“ 3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes,

specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.”

(emphasis supplied)

In relation to Articles 16 (4) and 19 of the Constitution it is held as under :

14. ---. There can be no doubt that this is a fundamental right and members belonging to the Scheduled Castes/Scheduled Tribes specified in one State have a right to free movement to another State and to reside and settle in the other State if they so desire. As stated earlier certain privileges have been conferred on members belonging to the Scheduled Castes and Scheduled Tribes in Part XVI of the Constitution, namely, Articles 330, 332, 335 and 336 which we have referred to earlier. But as pointed out earlier on a plain reading of clause (1) of both Articles 341 and 342, extracted earlier, it becomes obvious that the power of the President is limited to specifying the castes/tribes which shall, “for the purposes of Constitution”, be deemed to be Scheduled Castes or Scheduled Tribes “in relation to a State or a Union Territory”, as the case may.

(emphasis supplied)

Expressing complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 in the case of ***Marri Chandra*** (Supra). The Constitution Bench further held as under :

"16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....”

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

(emphasis supplied)

It is thus apparent that the Constitution Bench in Action Committee (supra), did not digress from the view as expressed in Marri Chandra Shekhar Rao (supra), on any ground.

9. In *State of Maharashtra Vs. Milind and others, (2001) 1 SCC 4*, the Constitution Bench of the Hon'ble Apex Court in relation to the object of the clauses of Articles 341 and 342 of the Constitution has held as under :

12. ----. It appears that the object of clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342, is to be determined looking to them as they are. Clause (2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the entries in the schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Scheduled Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under

clause (1) of the said articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament.

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

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

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

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

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

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar* and *Dina v. Narain Singh* did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1)

above no inquiry at all is permissible and no evidence can be let in, in the matter. ”

The Constitution Bench thus was categorical in its enunciation that orders, once issued under clause (1) of Articles 341 and 342 of the Constitution could not be varied by subsequent order or notification even by the President except by law made by Parliament, which would clearly indicate, that the presidential orders/notifications once issued under clause (1) of Articles 341 and 342 were inviolate.

10. In **Sudhakar Vithal Kumbhare Vs. State of Maharashtra and others (2004) 9 SCC 481** a Three Judges Bench of the Hon'ble Apex Court had the occasion to consider the issue regarding migration, in light of the background of reorganization of States. In this case the appellant was a resident of village Sawargaon, Post : Pandhurna, Distt. Chindawara in the State of Madhya Pradesh, which as a result of the States reorganization went to the State of Maharashtra. The appellant belonged to the Tribe Halba, which was recognized as a Scheduled Tribe both in the State of Madhya Pradesh as well as the State of Maharashtra. The appellant thereafter got employment in the State of Maharashtra against reserved vacancy and was promoted in the year 1987 on the basis of the Tribe certificate as issued by the Competent Authorities of the State of Madhya Pradesh. In response to a show-cause notice claiming that he was not entitled to the benefit of reservation for Scheduled Tribe in State of Maharashtra, the appellant was reverted, which was challenged by way of writ petition, which came to be dismissed on the ground that the appellant came from the

State of Madhya Pradesh and though belonged to the Scheduled Tribe 'Halba' which was recognized as such in the State of Maharashtra, was not entitled to benefit of reservation. The Hon'ble Apex Court, was considering the following question :

“Whether the members of Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganization Act ?”

The following observation in ***Sudhakar*** (Supra) being material is quoted below :

“5. ----- . With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind. ”

However, a careful perusal of the judgment in ***Sudhakar*** (Supra) would reveal that the question as framed was left unanswered by the Hon'ble Apex Court and the matter was decided on the basis of the fact that the appellant's case was not referred to

the appropriate Scrutiny Committee, in light of the dictum in *Kumari Madhuri Patil's case [(1995) 4 SCC 32]*.

11. The matter thereafter came up for consideration in *S.Pushpa and others...Vs.Sivachanmugavalu and others (2005) 3 SCC 1*. This was a case in respect of the Union Territory of Pondichery where in respect of an advertisement for posts of selection grade teachers to be appointed in the Union Territory in which, 56 posts were reserved for scheduled castes candidate several S.C. candidates from outside the Union Territory had applied in which 29 candidates from outside were selected, challenge to which before the C.A.T. (Madras), basically on the ground that the migrant S.C. candidate belonging to other State was not eligible for appointment on a post which was reserved for an S.C. candidate for the Union Territory, was upheld in light of the judgments in Marri Chandra Shekhar Rao and Action Committee (Supra). The matter therefore came up before the Apex Court, which after considering the creation of the Union Territory of Pondicherry as under :

“4. Before advertng to the contentions raised by learned counsel for the parties, it is necessary to mention that the UT of Pondicherry comprises of former four French settlements in India viz. Pondicherry, Karaikal, Mahe and Yanam. Karaikal is situate within the territorial boundary of the State of Tamil Nadu, Mahe is situate within the territorial boundary of the State of Kerala and Yanam is situate within the territorial boundary of the State of Andhra Pradesh. Though *de facto* transfer of these four French settlements to the Government of India took place in the year 1954, they legally merged with the

Union of India with effect from 16-8-1962 by the Eighteenth Amendment to the Constitution. These four settlements were constituted as UT of Pondicherry under the Government of Union Territories Act, 1963 (Act 20 of 1963).

and the policy of the Government of India as comprising in the D.O. letter dated 4/2/1974 addressed by the Joint Secretary, G.O.I. Ministry of Home Affairs Lt. Governor of Pondicherry, which was to the following effect :

“So far as reservations for SC/ST candidates in posts/services under the Central Government are concerned, the concession is admissible to all SCs and STs 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 SCs/Tribes. Thus for a reserved vacancy in a Central Government office located in a State, any SC candidate throughout the country would be eligible. Since Pondicherry is a Union Territory all orders regarding reservations 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 an SC/Tribe candidate from outside Pondicherry should also be eligible for a vacancy reserved for SCs/STs in the Union Territory Administration.”

(emphasis supplied)

and so also the consequent Government order by the Government of Pondicherry dated 16/2/1994, directing that S.C./Tribe candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for

S.Cs./Tribes in this administration and the Circular dated 6/1/1993 issued by the Government of Pondicherry, which reiterated the position stated above and the clarification issued by the Central Government regarding admissibility of reservation benefit to migrant S.C./S.T. candidates vide letter dated 6/10/1995 which also stated that “In view of the above position explained above, Pondicherry being UT, services under the administration will be open to all the SCs/STs irrespective of their State of origin. Further in regard to posts filled on all-India basis through UPSC or SSC on open competition basis, SC/ST candidates irrespective of their State of origin can apply” held as under :

“16. These documents show that the Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration as well. Since all SC/ST candidates which have been recognised as such under the orders issued by the President from time to time irrespective of the State/Union Territory, in relation to which particular castes or tribes have been recognised as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry Administration. Consequently, all SC/ST candidates from outside the UT of Pondicherry would also be eligible for posts reserved for SC/ST candidates in the Pondicherry Administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry Administration whereunder migrant

SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration.”

(emphasis supplied)

While considering ***Marri Chandra Shekhar Rao*** (Supra) the Apex Court in view of the distinction between a Union Territory and a State held as under :

“17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in *Marri Chandra Shekhar Rao* [(1990) 3 SCC 130 : (1990) 14 ATC 671] cannot have application here as UT of Pondicherry is not a State. As shown above, a Union Territory is administered by the President through an Administrator appointed by him. In the context of Article 246, Union Territories are excluded from the ambit of the expression “State” occurring therein. This was clearly explained by a Constitution Bench in *T.M. Kannian v. ITO*. In *New Delhi Municipal Council v. State of Punjab* the majority has approved the ratio of *T.M. Kannian* and has held that the Union Territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of *Marri Chandra Shekhar Rao* in setting aside the selection and appointment of migrant SC candidates.

18. The contesting respondents (applicants before the Tribunal, who challenged the selection) can derive no benefit from the decision in *Marri Chandra Shekhar Rao*. In this case the writ petitioner Marri Chandra was born in Gouda community in the State of Andhra Pradesh, which is recognised as a Scheduled Tribe in the Presidential

Order issued for the said State. For getting admission in a medical college in the State of Maharashtra, he claimed benefit of reservation being an ST. Gouda community was not recognised as Scheduled Tribe in the Presidential Order issued for the State of Maharashtra and on this ground he was denied the benefit of reservation. He then filed the writ petition claiming that he is entitled to benefit of reservation being a member of ST. It was in these circumstances that it was held that his community having not been included as an ST in the Presidential Order issued for the State of Maharashtra, he had no legal right to claim benefit of reservation in the State of Maharashtra. The UT of Pondicherry having consistently followed the policy of the Central Government where all Scheduled Caste candidates were given the benefit of reservation, the selection made following the said policy could not be held to be suffering from any legal infirmity on the principle laid down in *Marri Chandra Shekhar Rao* .”

(emphasis supplied)

Thus, the position of law as laid down in *Marri Chandra Shekhar Rao* (Supra), was clearly held to be not applicable, on the facts of the case and the distinction between a Union Territory and the State, apart from which it was specifically found that the Union Territory of Pondicherry had been consistently following the policy of upholding the benefit of reservation to one and all, including migrants. The Hon'ble Apex Court further held as under :

“21. ----- . 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.”

(emphasis supplied)

It would thus be apparent that in this case it was held that it was permissible for a State to make a policy/enactment whereby the reservation from the State of origin can be carried forward to the State of migration. It is however trite, that this is strictly a matter of policy to be framed by the State of migration. In cases of States who have framed such a policy permitting carrying forward of migration, the migrant, in the state of migration, would continue to have the same benefit insofar as reservation is concerned as was to be had in the State of origin. However, in States which have not adopted this policy, the benefit of reservation cannot be carried forward from the State of origin to the State of migration, which is clearly the dictum of the Hon'ble Apex Court in *S. Pushpa* (Supra). A similar view was also taken in *Chandigarh Administration / Surinder Kumar (2004)*¹

SCC 530, in which relying upon the Circulars issued from time to time, issued by the GOI, persons belonging to the reserved castes/tribes from outside the geographical area, were permitted to avail the benefit of reservation. However, whether the State would have the legislative competence to frame such a policy/law, is a different matter altogether.

12. In ***Chetna Rajendra Tank Vs. Committee For Scrutiny of Caste Certificates and others (2005) 6 BCR 920*** the issue of migration was again considered by a Division Bench of this Court. In this case the petitioner who belonged to Gurjar caste was born at Chakradharpur in the State of Bihar, was educated at Harda in Hoshangabad District in the State of Madhya Pradesh. The petitioner on 17/6/1990 got married to Mr. Rajendra Tank domiciled in the State of Maharashtra and shifted to Maharashtra. Gurjar caste was recognized as Other Backward Class (OBC) in the State of Madhya Pradesh by a notification dated 8/2/1985 as well as Maharashtra by Resolution dated 01/01/2001. The petitioner in election held on 11/2/2002 to Nagpur Municipal Corporation from the seat reserved for O.B.C. was declared elected. In light of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Class and Special Backward Categories (Regulation of Issuance of Verification of) Castes Certificate Act, 2000, which came into force on 18/10/2001, the requirement of verification of caste became mandatory. The matter was therefore referred to the Caste Scrutiny Committee who vide communication dated 7/2/2005 informed that the caste claim

of the petitioner could not be verified as she was not a permanent resident of the State of Maharashtra. The learned Division Bench after considering the judgments in ***Marri Chandra Shekhar Rao, Action Committee, Sudhakar Kumbhare, S. Pushpa*** (Supra), came to the following conclusion. :

“Applying the ratio as culled out from the judgment of the Constitution Bench and the facts as set out herein, it would be clear that the petitioner is migrant to the State of Maharashtra. She was born in Bihar. The mere fact that she studied in Madhya Pradesh would be of no consequence. She at the highest will be entitled to benefits in the State of origin which is Bihar and would not be entitled to the benefits which the notified O.B.C. is entitled to in the State of Maharashtra. The mere fact of marriage to a person belonging to the same caste or any other reserved caste is of no consequence as marriage would not alter the legal position insofar as caste is concerned which is acquire by birth.”

(emphasis supplied)

In respect of ***Sudhakar (supra)*** the Division Bench, found as under :

“ 8. ----- . We are not called upon to answer the issue as the Apex Court in that case only directed the matter to be referred to the committee and the appellant before it to be reinstated till the decision of the committee.

In our opinion, this judgment in no way departs from the Constitution Bench judgment of the Apex Court in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheuled Tribes in the State of Maharashtra and another (supra).”

13. ***Bankimchandra Mankanbhai Patel / State of Maharashtra 2006 (2) Mh.L.J.664*** (Bankimchandra-II), was a case in which the petitioner belonged to 'Dhodia' tribe which is recognized as a Scheduled Tribe, in view of the Presidential Notification under Article 342 (1) of the Constitution of India, both in the State of Gujarat and the State of Maharashtra. The petitioner's father was born on 2/6/1953 at village Pitha Tq. Chikhali, Distt. Valsad now in the State of Gujarat, who was employed with the Western Railways since 1976, as a result of which, the petitioner who was born on 15/8/1979 at Pitha and his father came to reside at Mumbai. The Scrutiny Committee, to which the Tribe Certificate held by the petitioner was submitted for validation, invalidated the same holding that the petitioner was a migrant from the State of Gujarat to the State of Maharashtra. The position as to bifurcation of the original State of Bombay in light of the States Reorganization Act, 1956 and Bombay Reorganization Act (11 of 1960), was stated therein as under :

“the State Reorganization Act came to be passed in the year 1956 and many States in the Union of India were re-organized in accordance with the provisions of the Act. The larger Bombay State survived from 1956 to 1960. The Bombay Reorganization Act (11 of 1960) came to be passed by the Parliament in 1960, whereby the larger State of Bombay was bifurcated into two States namely Gujarat and Maharashtra. Under the provisions of the Bombay Reorganization Act, 1960, the appointed date is 1-5-1960 and eleven districts of erstwhile Bombay State were separated and those eleven districts with six other districts were to form the State of Gujarat.”

(emphasis supplied)

Thus, this was a case in which the Court was called upon to consider, a situation where a geographical area was divided into two portions, one of which went to the State of Maharashtra and the other to the State of Gujarat. In the present case in hand the territorial region of Nanded was brought into the State of Bombay from the State of Hyderabad on 1/11/1956 by the States Reorganisation Act, 1956 and on 1/5/1960 the State of Bombay was dissolved and split into two states with some Gujarati speaking areas going to the State of Gujarat and others forming the State of Maharashtra, in which Nanded continued in Maharashtra – the contention in our case is that there was no migration since both Territories formed part of one and the same State. The question therefore which fell for consideration before the Division Bench in **Bankimchandra** (ii) was as under :

'The question, therefore, which arises is, whether a person born in geographical area forming part of erstwhile State of Bombay at the time of the Presidential Notification on 10-8-1950 and now not included in the geographical area of the State of Maharashtra is entitled to the benefits of reservation in the State of Maharashtra or local bodies, Corporation or companies where the scheduled tribe is notified as S.T. in the old Bombay State and also in the State of Maharashtra, if he was not resident in the State of Maharashtra on 1-5-1960'.

(emphasis supplied)

Answering the same in light of the provisions of the States Reorganization Act, 1956 and the Bombay Re-organisation Act, 1960, the Division Bench held as follows :

“ In other words, though the Presidential Notification was issued in the year 1950 because of the State Reorganization Act, 1956 and Bombay State Reorganization Act, the benefits would be available to only those persons amongst the notified scheduled tribes who are residents in the localities. In other words, if on 1-1-1960, when the State of Maharashtra came into being, if there was a person belonging to any of the notified scheduled tribes in the State of Maharashtra and if he was resident in the localities in the State of Maharashtra only then shall such person will be entitled to the benefits as a member of the scheduled tribe in relation to that State provided he was also resident in the erstwhile State of Bombay on the date of the Presidential Notification dated 10-8-1950 and on 1-11-1956 when the new State of Bombay came into being. This would mean that only those members of the Scheduled tribes who are included as a notified scheduled tribes in the State of Maharashtra and who were and are permanent residents in the State of Maharashtra and in the localities in which they are notified as on 1-1-1960, would be entitled to be treated as S.T. in relation to the State of Maharashtra. This aspect has not been considered by both the division Benches as their attention was not drawn to the same. The same reasoning will also apply insofar as scheduled castes are concerned. ”

(emphasis supplied)

The Court further held as under :

“11. Having so held, we are clearly of the opinion that a member of the S.T. notified for

the State of Maharashtra who are resident in the State of Guajrat or other State and who might have been S.T.s notified in the erstwhile State of Bombay as and from 1-1-1960, bearing in mind Article 342 of the Constitution of India and Paragraph 2 of the Constitution (Scheduled Tribes) Order 1956, after 1-1-1960 if they are not resident on that date in the state of Maharashtra, would not be entitled to the benefits for the notified S.T.s in the State of Maharashtra. The same reasoning would also apply to S.C.s. ”

(emphasis supplied)

In respect of ***Sudhakar*** (supra) the Court specifically held that the issue was not answered.

14. The issue thereafter was considered by the Division bench of this Court in ***Hitesh Dasiram Murkute, 2007(5) Mh.L.J. 454***, where the Court after considering ***Marri Chandra Shekhar Rao*** and ***Action Committee*** (supra) held as under :

'Conclusions:

53. To sum up:

(i) It is necessary to give full effect to both the expressions “for the purpose of this Constitution” as well as “in relation to the State”, appearing in Articles 341 and 342 of the Constitution and Clause 2 of the Constitution Scheduled Tribe and Scheduled Castes Orders, 1950, in order to identify the beneficiary correctly i.e. by ensuring that he belongs to caste identified with reference to a State as Scheduled Caste or Tribe.

(ii) The object of including a caste or a tribe in the schedules to the orders was to do away with their disadvantaged position in the areas where they resided

vis-a-vis other population. The crucial test would therefore be whether the person concerned suffers the same degree of disadvantage vis-a-vis other segments, as other local people of his caste suffer or whether as a migrant, he is placed on a higher pedestal.

(iii) Extending benefits to a migrant does no offence to the expression 'in relation to the State' in Articles 341/342 of the Constitution or Clauses 2 of Scheduled Caste/Scheduled Tribes Orders, 1950, since entitlement of such a person would have to be still decided with reference to the origin of such migrant and identification of migrant's caste as backward in relation to such State.

(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the schedule on the date of such inclusion with reference to locality identified in the schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in schedule from a place identified in the schedule. In other words, the relevant date is not date of migration but date of inclusion of caste or tribe in the schedule.

(v) Reorganization of States did not proceed on the basis of castes or tribes but on linguistic basis and therefore, localities of persons entitled to the benefit of reservation got divided in different States.

(vi) If upon removal of area restrictions, in the entire area of the State as originally existed on the date of notification of Constitution (Scheduled Castes/Scheduled Tribes) Orders, the persons concerned could avail of the benefits of reservation, there is no reason why they should be denied such benefits upon reorganization of the States, in which a part of their locality was included.

(vii) The ratio of the decision in *Marri Chandra* is only that a migrant would be disentitled for reservation in the State of migration if his caste is not notified as Scheduled Caste or Scheduled Tribe in the State of

migration. (Since in *Marri Chandra's case* the caste "Gouda" was notified in the State of Andhra Pradesh but not in Maharashtra). It would be impermissible to conclude that even though his caste is so notified in the State of migration, he would be disentitled to benefits, since such conclusion would frustrate the very object of providing benefits enumerated at (ii) above.

(viii) In *Action Committee* while explaining and following the ratio in *Marri Chandra's case*, the Apex Court must be held to have merely sought to deny benefits to migrants belonging to a caste of same nomenclature, by consciously choosing the expression "same nomenclature" and avoiding the use of words "same caste". This implies that if persons belong to the 'same caste' they were not to be denied the benefits.

(ix) sections 26 and 27 of the Bombay State Reorganization Act merely amend the schedules as a corollary to creation of State of Maharashtra and have no bearing on the question of entitlement of the migrants to reservation with reference to date on which the State was created.

(x) As held by the Apex Court in *Sudhakar v. State*, if a migrant belonged to a community which was recognised as Scheduled Caste or Scheduled Tribe in any locality which has been divided upon reorganization of States and his caste is recognised as Scheduled Caste/Scheduled Tribe even in such newly formed States, the migrant would be entitled to benefit of reservation even in the State in which part of the locality other than his place of origin has gone.

15. The dictum in *Hitesh Murkute* (supra) was reiterated in *Santosh Padoti / Caste Scrutinee Committee, 2006(2) Mh. L.J. 825 and Sheetal Manikrao Dupare, 2007(5) Mh.L.J. 330.*

16. In *Subhash Chandra & another / Delhi Subordinate Services Selection Board and others (2009) 15 SCC 458*, the Apex Court had an occasion to consider the issue. In that case the private respondents and/or their parents were migrants to Delhi. In their native places, they were declared to be the members of the Scheduled Castes. The Ministry of Home Affairs from time to time had issued various circulars, in terms whereof, the manner in which the claim of a person as belonging to SC/ST was required to be verified was laid down. These Circulars/ directions reiterated the position as enunciated by Marri, that the person from SC/ST shall have the benefit of reservation in the state of his origin and not in the state of migration, In pursuance to an advertisement issued by the State Subordinate Selection Board, general instructions were issued requiring SC and OBC candidates to furnish certificates issued by the Competent Authority of the Government of NCT of Delhi, being aggrieved by which a petition was filed in the High Court at Delhi, which was allowed by the Learned Single Judge, which was maintained in Appeal by the Division Bench, resultant to which the matter came before the Apex Court, wherein the following questions were framed :

'18. In view of the rival contentions of the parties, the questions which arise for our consideration are:

(1) Having regard to the decisions of this Court in *Marri Chandra Shekhar Rao* and *Action Committee*, the specification of a particular caste or tribe to be a Scheduled Caste and Scheduled Tribe being in relation to that State or Union Territory,

whether a person on his migration to another State would carry the same status with him?

(2) Whether in view of the decisions of this Court in *Action Committee* even where the similar caste bearing the same name having been declared to be a Scheduled Caste both in the State to which he originally belonged and the State and/or Union Territory to which he has migrated would make any difference in view of the provisions contained in Article 341 of the Constitution of India?

(3) Whether in view of the decisions of the Constitution Bench of this Court in *State of Maharashtra v. Milind* and *E.V. Chinnaiah v. State of A.P.* extension of notification even to a migrant would amount to modification and/or alteration of the notification which is impermissible in law in view of clause (2) of Article 341 and clause (2) of Article 342 of the Constitution of India?

(4) Whether having regard to the provisions contained in Articles 239 and 239-AA of the Constitution in relation to Union Territory it is permissible for the Central Government to direct recruitment to the Union Territory Services treating it to be akin to Central Civil Services in view of the decisions of this Court in *Chandigarh Admn.* and *S. Pushpa*?

(5) Whether the ratio laid down by this Court in *Chandigarh Admn.* and *S. Pushpa* having not taken into consideration the binding precedents in the Constitution Bench decisions in *Milind*, *Chinnaiah* and *MCD v. Veena* would constitute binding precedents'

Answering the same, the Apex Court after tracing the history of the judicial precedents on this issue, held as under :

79. The law relating to affirmative action and protective discrimination by way of reservation of posts for the members of the Scheduled Castes

invoking clause (4) of Article 16 of the Constitution of India is reflected by constitutionalism i.e. the provisions of the Constitution of India read with the executive instructions issued by the National Capital Territory of Delhi in this behalf which has the force of law in terms whereof only the classes of persons who would be entitled thereto were determined. By judicial process or otherwise, the said executive instructions which are consistent with the constitutional scheme could not have brought about an altogether different situation as a result whereof those who are residents of Delhi being belonging to the members of the Scheduled Castes and, thus, entitled to be regarded within the framework of the quota provided for by the Government could not have been deprived therefrom by way of bringing in another class of persons within the purview of the said category of Scheduled Castes who are not entitled to the said benefit. By reason of such an act, those who are entitled to the benefit of the doctrine of protective discrimination contained in clause (4) of Article 16 of the Constitution of India had been deprived of their constitutional right. Once it is found that the constitutional violation of this nature has been committed, in our opinion, the courts would be entitled to apply the principle of strict scrutiny test or closer scrutiny test or higher level of scrutiny.

The General Instructions issued were thus quashed and set aside, which affirmed the position as enunciated in ***Marri Chandra Shekhar Rao*** and ***Action Committee*** (supra).

While considering ***S. Pushpa*** (supra), which was by a three Judges Bench, the two judges Bench in ***Subhash Chandra*** (supra) held as under :

'65. If the principle applied in S. Pushpa is to be given a logical extension, it will lead to an

absurdity that the Scheduled Castes Order in a State brought under the control of the President under Article 356 could be altered by virtue of a notification issued in pursuance of Article 16(4) of the Constitution.

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

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.

71. If the Central Civil Services and the Union Territory Services are different, keeping in

view the constitutional schemes, particularly having regard to the proviso appended to Article 309 of the Constitution of India, the same cannot be done away with only because a Union Territory administratively is administered by the Central Government. Any direction or policy decision, thus, must satisfy the constitutional requirements laid down under Articles 341 and 342 of the Constitution of India. If any other construction is made, a policy decision having regard to the decisions of this Court will have to be treated as a proviso appended to clause (2) of Article 341 of the Constitution of India and would amount to deriding of the Constitution which is impermissible in law.

72. -----. Moreover, enabling provision contained in clause (4) of Article 16 of the Constitution of India can of course be enforced by reason of an executive direction but the same must be made in terms of Article 77 or Article 162 of the Constitution of India.

73. Furthermore, a circular letter does not have the force of law. (See *Punjab Water Supply and Sewerage Board v. Ranjodh Singh* Article 246 of the Constitution will, thus, have no application where law-making power is not resorted to. Executive instructions contained in Article 77 and Article 162 refer to the law-making power alone.

106. We have noticed hereinbefore that the premise on which *S. Pushpa* was rendered, namely, *Marri Chandra Shekhar Rao* had no application to Union Territories, was not correct. Would we be violating the norms of judicial discipline in ignoring the decision of this Court in *Pushpa* is the question, having regard to the provisions contained in Article 141 of the Constitution of India?

110. *Should we consider Pushpa to be an obiter following the said decision is the question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely, Marri Chandra Shekhar Rao and E.V. Chinnaiah. Marri Chandra Shekhar Rao had been followed by this Court in a large number of decisions including the three-Judge Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the constitutional scheme as contained in clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following Dayanand, therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio."*

(emphasis supplied)

The Division Bench in ***Subhash Chandra*** (supra) thus held the enunciation of law in ***Marri Chandra Shekhar Rao*** (supra) to be the correct one and that the dicta in ***Pushpa*** (supra) which was by a three judges Bench of the hon'ble Apex Court was Obiter and did not lay down any binding ratio.

17. The issue was thereafter considered by the Division Bench of this Court in ***Radhabai Charansingh Chaware Vs. State of Maharashtra, reported in 2007 SCC Online Bom. 345.***

In this case the petitioner was born on 10/6/1963 in Adilabad District (Andhra Pradesh) and belonged to Mehtar Community which was recognized as Scheduled Caste in Andhra Pradesh. On 9/2/1981 she married Charansingh Chaware, resident of Wardha in the State of Maharashtra, who also belonged to Mehtar Community, which is recognized as Scheduled Caste in the State of Maharashtra and consequent to the marriage was residing with her husband at Wardha. The petitioner had obtained certificate from the S.D.O., Wardha to the effect that she belonged to Scheduled Caste. Several elections were contested by her for the Municipal Council, Wardha and in 2006 and in the election of the year 2006 was declared elected on 27/11/2006, consequent to which her caste certificate was referred to the Scrutiny Committee, which by its order dated 13/12/2006 held that the petitioner was not entitled to claim the benefit of reservation and her caste certificate was canceled, resulting in cancellation of her election, all of which came to be challenged by the petitioner by way of petition before the High Court. The matter was seized of by the same Bench which had rendered the judgment in *Hitesh Murkute* (supra) and thus it, followed what was laid down in *Hitesh Murkute* (supra).

18. That another Division Bench of this Court finding itself unable to agree with the views expressed in *Hitesh Murkute* (supra) as well as in *Bankinchandra (ii)* (supra) requested the hon'ble Chief Justice to constitute a larger bench, as a result of which the matter thereafter was considered by the Full Bench of this Court in *Shewta*

Santlal Lal / State of Maharashtra 2010 (2) Mh.L.J. 904, where the Full Bench, was seized with the following question :

“Whether a person who was not ordinarily resident as on the date of the relevant Presidential Notification in the area that now constitutes the State of Maharashtra will be entitled to the benefit of reservation in the State”.

The Full Bench in ***Shewta (supra)*** took note of ***Marri Chandra Shekhar Rao, Action Committee, Sudhakar, Bankimchandra***, (supra) amongst others and also considering the contrary view in ***Hitesh Dasiram Murkute/ State of Mah. 2007(4) Bom. C.R. 784***, ***Santosh Patodi / Caste Scrutiny Committee 2006 (2) Mh.L.J. 825*** and ***Sheetal Dupare /State of Maharashtra 2007 (5) Mh.L.J. 330***, which contrary view was based upon ***Sudhakar*** (supra) noted as under :

"4. It appears that the learned Division Bench, which proceeded to pronounce the Judgment in the case of *Hitesh D. Murkute* (supra) relied on the Judgment of a Bench consisting of three Judges of the Supreme Court in the case of *Sudhakar Vithal Kumbhare. v. State of Maharashtra*, which had been noted by another Division Bench of this Court in *Bankimchandra Mankanbhai Patel* (supra). The view taken in *Hitesh D. Murkute*, appears to have been reiterated in *Santosh Padoti v. Caste Scrutiny Committee*, 2006 (2) Mh.L.J. 825 : 2006 (Supp) BCR 797 and *Sheetal Manikrao Dupare v. State of Maharashtra*, 2007 (5) Mh.L.J. 330 : 2007 (6) BCR 332. “

Noting what was held in second para 9 of Bankimchandra (ii) [quoted above in para 14] “In other words, though the Presidential Notification was issued in the year 1950 because of the State Reorganisation Act, 1956, ---], the Full Bench held :

“ 9. If such construction is not to be accepted in view of the observation in *Kumbhare* (supra), as understood in *Markute* (supra) and the date of the Presidential notification i.e. 10th August, 1950 is considered without reference to the reservation in the geographical area of the new State of Maharashtra, then all S.T.s in the erstwhile geographical area of the Bombay State on the date of the Presidential Order would also be S.T.s for the State of Bombay as also the State of Bombay which came into being in 1956 though they were not ordinarily resident of the State of Maharashtra on 10-8-1950. This would mean that S.T.s in the earlier geographical region of Bombay State as on 10-8-1950 though in some other State if notified, as S.T.s in that State, and also in the State of Maharashtra, though not resident in the State of Maharashtra, would be entitled to the benefits of S.T. Reservation in the State of Maharashtra. This would increase the population of S.T.s for the State of Maharashtra, and would deny to the members of the S.T.s ordinarily resident in the State of Maharashtra, the benefits of reservation as they would have to share the same with S.T.s having similar nomenclature from other States which formed the erstwhile State of Bombay as on 1-8-1950. The S.T.s of the other States at the same time would continue to get the benefit of reservation in the State of origin. ”

It further held :

“ 12. It would thus be clear that insofar as State of Maharashtra is concerned, both classes of

migrants will be treated as belonging to the Scheduled Tribe in the State of their origin and will be entitled to derive benefits in the State of their origin and not from the State of Maharashtra. The Explanation further makes it clear that the cut-off date is 6th September, 1950 even if there be some other subsequent Presidential Notification notifying some other tribes. Considering the explanation, what is relevant for considering is whether a person in the case of S.T. was ordinarily resident on 6th September 1950. Only such a person would be ordinarily resident in the geographical area now constituting the State of Maharashtra and will be entitled to the benefit of reservation in the State of Maharashtra.

17. It is possible that merely because of migration, the disadvantages which a person belonging to a backward class suffers from may not disappear” even in the State of migration. That however has to be read in the context of the words ‘for the purpose of the Constitution’ and ‘in relation to that State’ and the Presidential Notifications notifying the various castes and tribes for each State. In *Bankimchandra*, this aspect was noted and the consequences that would follow if migrants from another State which formed a part of the region before its bifurcation, were granted the benefits in the State of migration. Reservation is based on the population of the communities in that State. In Maharashtra, it is 9% for Scheduled Tribes and 13% for Scheduled Castes. The present State of Maharashtra, at the time of coming into force of the Constitution, formed a part of the larger State of Bombay which was a large geographical area. This State of Bombay thereafter was reorganized in 1956. Thereafter, there, was further reorganization on 1-5-1960. The consequences of accepting the argument would be, that all the caste and tribes notified in the Presidential Notification in the erstwhile State of

Bombay at the time of coming into force of the Constitution if notified for the State of Maharashtra would also be entitled to the benefits in the new State. In our opinion, this would run counter to the ratio of the Judgment of the Constitution Benches in *Marri Chandra Shekhar Rao* and *Action Committee* which have explained and interpreted Articles 341 and 342 of the Constitution. As long as Parliament or the State Legislature does not make any law as noted by the Supreme Court in *Marri Chandra Shekhar Rao*, reproduced earlier, the migrants in the State of migration will not be entitled to the benefits of reservation in the State of migration, but will continue to enjoy the benefits in their home State or State of origin. -----

18. A person does not cease to belong to his caste/tribe on migration to an area more advanced with a more liberal atmosphere. The long residence in such State of migration could result in the handicaps suffered by belonging to a socially disadvantageous community being tempered down. While enacting Articles 341 and 342, the Constitution Fathers did note these aspects. Firstly, by limiting it initially for a time-frame with the hope and expectation that education and socioeconomic justice would result in these communities becoming socially and economically forward. At the same time, the Constitution Fathers in relation to the State also noted that benefits must go to those socially and economically disadvantaged in the geographical area of that State. Considering the tribes and castes notified by the Presidential Orders, all such castes and tribes would be getting benefits of reservation in the State of their origin. The Court in *Marri Chandrashekhar Rao* also noted where there may be cases of persons migrating individually for the purpose of employment, etc. but having construed Article 342, the Court left it to the wisdom of

Parliament to provide benefits in the State of migration.”

(emphasis supplied)

The Full Bench then considered the dictum in ***Hitesh Dasiram Murkute*** (supra) threadbare, as under :

“23. We propose to deal with each of the conclusions.

(i) Insofar as conclusion (i) is concerned, really speaking, it is in terms of the law declared in *Mam Chandrashekhar Rao* (supra).

(ii) Insofar as conclusion (ii) is concerned, the same runs counter to the law declared by the Constitution Benches in *Marri Chandrashekhar Rao* and *Action Committee*. To that extent, the conclusion that a crucial test would be whether the person concerned suffers the same degree of disadvantage vis-a-vis other segments, as other local people of his caste suffer or whether as a migrant, he is placed on a higher pedestal, in our opinion, is contrary to the ratio in *Marri Chandrashekhar Rao* and *Action Committee* (supra). Once the Presidential Notification is issued that is recognition of their disadvantage. Courts cannot examine that issue. Further, any executive action or legislative enactment which interferes, disturbs, rearranges, regroups or reclassifies the various castes found in the Presidential List will be violative of scheme of the Constitution and will be violative of Art. 341 of the Constitution. (See *E.V. Chinnaiah. v. State of A.P.*). We may also gainfully refer to the following observations in *State of Maharashtra v. Milind*, :—

“15... Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, subcaste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential

Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential Order, when it is not so specifically included, may lead to problems...”

(iii) Conclusion (iii), in our opinion, also runs directly counter to the interpretation given to Articles 341 and 342 in *Marri Chandrashekhar Rao* (supra) and *Action Committee* (supra). In *Marri Chandrashekhar*, the Supreme Court has noted that it is for the Parliament/Legislature to extend benefits to migrants. As the law now stands in the State of Maharashtra, there is no such legislation and, therefore, the conclusion runs directly counter to the law in *Marri Chandrashekhar* and *Action Committee*.

(iv) Insofar as conclusion (iv) is concerned, we find in case of S.T. A person is treated as migrant if he was not ordinarily resident in the geographical

area now forming part of the State of Maharashtra as on 6th September, 1950. In case of a Scheduled Caste, it will be in terms of the letter dated February 12, 1981 which has fixed the date as 10-3-1950 which has been noted in *Marri Chandrashekhar Rao* and *Action Committee*. The date when a person can be treated as a migrant or non-migrant is the date as aforesaid.

(v) Insofar as conclusion (v) is concerned, in our opinion, it has hardly any relevance for the purpose of answering the controversy. The old concept where States were formed based on linguistic basis no longer subsists after the formation of the States of Uttarakhand, Chhattisgarh and Jharkhand as those States have the same language as of the States from which they have been excluded, Uttar Pradesh, Madhya Pradesh or Bihar.

(vi) Insofar as conclusion (vi) is concerned, the conclusion again runs directly counter to the ratio in *Marri Chandra Shekhar Rao* and *Action Committee* (supra). Removal of area restriction within a State by a notification does not mean that the Schedule to the Constitution stands amended. In our opinion, such a conclusion is not even borne out by the observations in *Kumbhare's case* (supra).

(vii) Conclusion (vii) runs counter to the Judgment in *Action Committee* where the question posed itself was a case where the caste/tribe happens to be notified both in the State of origin and the State of migration.

(viii) Insofar as conclusion (viii) is concerned, firstly, a judgment of a Court cannot be read as a legislation. What the Courts must consider is the ratio of the judgment and not the flourish of the language. The expression "same nomenclature" means the same name. The same name would therefore mean the name of the same tribe or caste. Various notifications issued are in respect of castes and/or tribes. No inference nor implication can be

drawn because in *Marri Chandrashekhar's case* the Court used the expression “same nomenclature”. In our opinion, the said conclusion also runs counter in *Marri Chandra Shekhar* and *Action Committee* as also in *Subhash Chandra*.

(ix) Insofar as conclusion (ix) is concerned, reference to sections 26 and 27 of the Bombay State Reorganization Act as considered in *Bankimchandra's case* was to identify where the person was ordinarily resident' for the purpose of benefit. It is true that it has no bearing on the question of entitlement of the migrants to reservation. However, it is important to note, that to claim benefits of reservation under the Presidential Notification, the person claiming such benefit must have ordinarily resided as of the date of the Presidential Notification in the area now constituting the State of Maharashtra. This has been explained in *Bankimchandra* in paragraph 6-7 which we have referred to earlier.

(x) Insofar as conclusion (x) is concerned, having explained the Judgment in *Sudhakar's case* which is the Judgment of the Bench of three Judges and the two Constitution Bench Judgments in *Marri Chandrashekhar* and *Action Committee*, the scheduled castes and scheduled tribes from any locality which has been divided upon Reorganization of States and such caste or tribe is also recognized as Scheduled Caste and Scheduled Tribe in the newly formed State, such migrant would not be entitled to benefit of reservation in the State of migration but would be entitled only of benefit in the State of origin.

And held as under :

“24. Having so explained, the conclusions, in our view, we disapprove and overrule the view taken in *Hitesh D. Murkute, Santosh Padoti, Sheetal*

Dupare and other judgments not brought before us but which may have taken the same view.

26. Having said so, we may now answer the Reference. In case of a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10-3-1950 in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6-9-1950, would not be entitled to benefits of reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin. Reference answered accordingly.”

(emphasis supplied)

The Full Bench in *Shweta Lal* (supra) was thus categorical in holding that a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10-3-1950 in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6-9-1950, would not be entitled to benefits of reservation as S.C./S.T. in the State of Maharashtra.

19. The status of a migrant scheduled caste came up for consideration of the hon'ble Apex Court in *Ranjana Kumari / State of Uttarachal & others 2013 (14) SCC 710*. This was a case in which the appellant belonged to Scheduled Caste (Valmiki of Punjab) and after her marriage with Shri Rajesh Gill, who was also Valmiki by caste, had settled in Deheradun, Uttarachal (now Uttarkhand). The appellant, in pursuance to an advertisement by the Public service Commission, Uttarachal, for recruitment in 833 posts in different cadres, had applied for appointment as District Information officer, as a Scheduled caste candidate. Having cleared the examination and the interview, she was provisionally selected but her

candidature was canceled on the ground that she cannot take benefit reservation in State of Uttarkhand because she was a Scheduled caste of Punjab. In Write Petition, the High Court held that right to be treated as a member of reserved category is directly attributable to birth and a person can claim the benefit of reservation only in the State in which he/she is born and not the State to which such person may migrate after marriage or otherwise and after migration from Punjab, the appellant cannot be treated as a member of Scheduled Caste in the State of Uttarakhand and she is not entitled to be appointed against the post reserved for Scheduled Caste. In S.L.P. on leave being granted the Hon'ble Apex Court considering the dichotomy between S. Pushpa and Subhashchandra (supra), as noticed by a Two Judge Bench of the Apex Court in ***State of Uttaranchal Vs. Sandeep Kumar Singh (2010)12 SCC 794*** in the following words :

“In our view, a Two Judge Bench of this court could not have held a decision rendered by a Three Judge Bench to be obiter and per incurium,” and considering that an important question of law as to interpretation of Articles 16 (4), 341 and 342 of the Constitution arose for consideration, referred the matter to the Hon'ble The Chief Justice, for constituting a Bench of appropriate strength, chose to follow the same.

20. As the question arising and referred to in State of ***Uttaranchal Vs. Sandeep Kumar Singh*** (supra), was felt to the surviving and subsisting, the same was referred for an answer by a Five Judge Bench of the Hon'ble Apex Court, which came to be

considered in *Bir Singh Vs. Delhi Jal Board and others (2018) 10 SCC 312*, in which it was held as under :

“33. The issue has to be viewed from another perspective. If a member of a Scheduled Caste/Scheduled Tribe of Andhra Pradesh who had migrated to Maharashtra is to be given the benefit of reservation it will amount to depriving a member of a Scheduled Caste/Scheduled Tribe of Maharashtra by reducing the reservation earmarked for them. It is in this context, in *Marri Chandra Shekhar Rao [Marri Chandra Shekhar Rao v. Seth G.S. Medical College*, that the Constitution Bench observed as under: (SCC pp. 144, para 14)

“14. ... But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression — “in relation to that State” or “for the purposes of this Constitution” — its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted (sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-

Scheduled Castes or non-Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution.”

34. 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’.

36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.

38. It is an unquestionable principle of interpretation that interrelated statutory as well as

constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Articles 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. 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 and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and therefore must be held to be impermissible under the Constitution.

(emphasis supplied)

In respect of the decision **Pushpa** (supra) the Court held as under:

42. Delhi, which was one of the original Union Territories, came to be called as “National Capital Territory of Delhi”. This change was introduced by the Constitution (Sixty-ninth Amendment) Act, 1991 with effect from 1-2-1992 by insertion of Article 239-AA in Part VIII of the Constitution (i.e. special provisions with respect to Delhi). Article 239-AA(3)(a) empower the Legislative Assembly of the National Capital Territory of Delhi to make laws with respect to any matters enumerated in the State List or in the Concurrent List (i.e. List II and List III of the Seventh Schedule to the Constitution of India) subject to certain exceptions. It is here that the Union Territory of Delhi i.e. National Capital Territory of Delhi is enjoined a special status inasmuch as power to enact laws on any of the subjects in List II and List III is a constitutional conferment as opposed to the position in the erstwhile Union Territories and the present day Union Territory of Pondicherry where the power to frame/make laws has been conferred on the Union Territory Legislatures by a parliamentary enactment i.e. Section 18 of the Government of Union Territories Act, 1963. The above narration has been considered necessary only to make the discussion complete. We make it clear that we are not entering into any discussion as to the special position/status of Delhi, if any, by virtue of the provisions contained in Article 239-AA as the said issue does not arise for consideration in the present reference.

43. The above view coupled with the scope and ambit of the present reference may also not require us to go into the correctness of the view expressed by this Court in para 14 of the decision in *S. Pushpa* (as already extracted). The resolution of the question formulated for an answer is capable

of being reached by adopting an entirely different perspective which we intend to do hereinafter.

(emphasis supplied)

Thus the Constitution Bench in ***Bir Singh*** (supra) reasserted the law as laid down in ***Marri Chandrashekhar Rao*** and ***Action Committee*** (supra). In a separate judgment rendered by R. Banumathi, J. of the Hon'ble Apex Court the majority view as expressed, was agreed to in the following words :

“Conclusion

156. Insofar as the States are, I agree with the majority view that a person who is recognised as a member of Scheduled Castes/Scheduled Tribes in his original State, will be entitled to all the benefits of reservation under the Constitution in that State only and not in other States/Union Territories and not entitled to the benefits of reservation in the migrated State/Union Territory.”

(emphasis supplied)

21. The larger Bench of Three Judges, to whom, ***Ranjana Kumari***, (supra) was referred also decided the same on 01/11/2018 in Civil Appeal No.8425/2013 as under :

“O R D E R

1. We have heard the learned counsels for the parties and perused the relevant material.

2. The appellant who belongs to Valmiki caste (Scheduled Caste) of the State of Punjab married a person belonging to the Valmiki caste of Uttarakhand and migrated to that State. In the State of Uttarakhand under the Presidential Order 'Valmiki' is also recognized as a notified Scheduled Caste. The State of Uttarakhand issued a certificate to the appellant.

3. *The appellant contended before the High Court that she was a Scheduled Caste of the State of Uttarakhand. The High Court having rejected the claim, the appellant is in appeal before us.*

4. *Two Constitution Bench judgments of this Court in **Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors.** and **Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr. vs. Union of India & Anr.** have taken the view that merely because in the migrant State the same caste is recognized as Scheduled Caste, the migrant cannot be recognized as Scheduled Caste of the migrant State. **The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigorous of the Constitution Bench Judgments in Marri Chandra Shekhar Rao (supra) and Action Committee (supra).***

5. *We, therefore, find no error in the order of the High Court to justify any interference. The appeal is accordingly dismissed."*

(emphasis supplied)

22. It is thus trite that the position as it stands today, in so far as the Scheduled castes and Scheduled Tribes declared under Articles 341 & 342 of the Constitution, is, what was enunciated by **Marri Chandra Shekhar Rao** and **Action Committee** (supra) as is affirmed by the Constitution Bench of the Hon'ble Apex Court in **Bir Singh** (supra) and the Three Judges Bench of the Hon'ble Apex Court in **Ranjana Kumari** (supra) that a migrant cannot have the benefit of reservation in the State of Migration, but continues to have such benefit, only in the State of Origin.

23. The States under Article 15(4) of the Constitution are recognized to have the power and authority to make any special

provision for the advancement of any socially and educationally backward class of citizens or for the Scheduled Class and Scheduled Tribes. Articles 15(5), (6) & 16(4), (4-A) & (6) of the Constitution further empower the States, to make provisions for the advancement of such classes, in various categories such as education, appointments etc. Thus Articles 15(4), (5), (6) and Article 16(4), (4-A) & (6) of the Constitution, provide to the States, the Authority to frame legislation or make any provision, for the purpose of advancement of any socially, educationally or economically backward classes of citizens, which may include the Scheduled Castes and Scheduled Tribes too and is thus not restricted to any particular class of citizens, provided such class of citizens has to be, in the State, socially and economically backward, so as to require support for their upliftment.

25. In so far as the authority under Article 16(4) of the Constitution is concerned the hon'ble Apex Court in *Indra Sawhney 1992 Supp (3) SCC 217*, has while summarising its answers to the various questions dealt with has held that :

“(1) (a) It is not necessary that the ‘provision’ under Article 16(4) should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under Article 12 of the Constitution are themselves competent to make such a provision, if so advised. (Paras 735-737)

(b) An executive order making a provision under Article 16(4) is enforceable the moment it is made and issued. (Paras 738-740)”

It further held that :

(3) (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectivities for the purposes of Article 16(4). (Paras 746 to 779)

(b) Neither the Constitution nor the law prescribes the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among, and along with, other occupational groups, classes and sections of people. One can start the process either with occupational groups or with castes or with some other groups. Thus one can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does — what emerges is a “backward class of citizens” within the meaning of and for the purposes of Article 16(4). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire

populace. The central idea and overall objective should be to consider all available groups, sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming minority of the country's population, one can well begin with it and then go to other groups, sections and classes. (Paras 780 and 785).

In regard to Articles 15(4) and 16(4) of the Constitution, it was held as under:

“It is not correct to say that the backward class of citizens contemplated in Article 16(4) is the same as the socially and educationally backward classes referred to in Article 15(4). It is much wider. The accent in Article 16(4) is on social backwardness. Of course, social, educational and economic backwardness are closely inter-twined in the Indian context. (Paras 786-789)”

It therefore also held that :

“The Government of India and the State Governments have the power to, and ought to, create a permanent mechanism — in the nature of a Commission — for examining requests of inclusion and complaints of over-inclusion or

non-inclusion in the list of OBCs and to advise the Government, which advice shall ordinarily be binding upon the Government. Where, however, the Government does not accept the advice, it must record its reasons therefor". (Para 847)

Thus the power of the State to provide for backward classes of citizens, other than Scheduled Castes and Scheduled Tribes, was duly recognised.

24. In *E.V Chinnaih / State of A.P (2005) 1 SCC 394*, the Constitution Bench, held as under :

" It is a well-settled principle in law that reservation to a backward class is not a constitutional mandate. It is the prerogative of the State concerned if it so desires, with an object of providing opportunity of advancement in the society to certain backward classes which includes the Scheduled Castes, to reserve certain seats in educational institutions under Article 15(4) and in public services of the State under Article 16(4)."

25. The hon'ble Apex Court in *Marri Chandra Shekhar Rao* (supra) had observed as under :

"8. ----The State must, therefore, resort to compensatory State action for the purpose of making

people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. ----.

10. -----. *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. ---”

(emphasis supplied)

which clearly indicate that the State is enjoined to take care of its Citizens first, before affording/extending the benefit of reservation to outsiders. Though in certain circumstances this may lead to denial of benefit of reservation to a person, as in the case of migration due to marriage, in which the lady has to shift to the residence of her spouse and thus cannot go back to her State of origin, where the residence of the spouse is in another State, however granting such a migrant the benefit of reservation would result in denying the benefit to an original resident of the State of Migration. This clearly would not be permissible, even under the provisions of Articles 15 & 16 of the Constitution for a State.

26. Though the expressions 'with respect to any State or Union Territory', 'after consultation with the Governor', and 'in relation to that State', as occurring in Articles 341 & 342 of the Constitution, do not find place in Articles 15 & 16 of the Constitution, however, the language of Articles 15 & 16, in fact enjoins the States, not to discriminate and provide equal opportunity to its citizens, which naturally and logically, would mean citizens of the State and not otherwise. The provisions of Article 15(4), (5) &

(6) & of Article 16 (4), (4-A) & (6) of the Constitution, are clearly State centric and empower the State to make provisions for its Citizens, in respect of matters as provided then. Thus the absence of the above expressions as occurring in Articles 341 & 342 of the Constitution, in Article 15(4), (5) & (6) & of Article 16 (4), (4-A) & (6) of the Constitution, would not enlarge the duty cast upon the State to make any special law for advancement of any socially, educationally and economically backward classes, to mean that every migrant to the State, irrespective of the date of migration, would become entitled to the benefit of reservation, merely because of his/her residence in the State on the date of such notification. Thus the State would equally be competent to frame a law and to specify a cutoff date, to determine, as to whom such provisions as to reservations, would apply and be available.

27. Thus the ratio of the judgments in *Marri Chandra Shekhar Rao, Action Committee, Bir Singh* and *Ranjana Kumari* (supra) though rendered on the background of Articles 341 and 342 of the Constitution are on a larger canvass and proposition, and are equally applicable to the case in hand and similar cases.

28. The State of Maharashtra, has since, from time to time, issued Government Resolutions, circulars etc. recognising various class of citizens as Other Backward Classes, Special Backward Classes, Nomadic Tribes, De-Notified Tribes.

29. The State enacted the Maharashtra Scheduled Caste, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category

(Regulation of Issuance and Verification of) Caste Certificate Act, 2000, (Caste Certificate Act 2000 for short) which having received the assent of the President of India, was published in the Maharashtra Government Gazette on 23/5/2001 and came into force on 18/10/2001. Any person who desired to have the benefits of reservations, was enjoined to make an application to the concerned Caste Scrutiny Committee for issuance of a validity certificate, which certificate, once issued would then entitle such person to all the concessions available on account of such reservations. All certificates issued prior to the coming into force of the Caste Certificate Act 2000, were declared to be invalid.

30. The Maharashtra Scheduled Tribe (Regulation of Issuance and Verification of) Certificate Rules, 2003, (Caste Certificate Rules 2003 for short hereinafter) were framed under the Caste Certificate Act, 2000. What is pertinent to note is that Rule 5, of the Caste Certificate Rules 2003 which dealt with grant of scheduled tribe certificate to migrants from other states, in explanation to sub-Rule (1) specifically defined “Migrant from other State”, to mean a person who had migrated to Maharashtra State from any other State/Union Territory on or after the First Presidential Order i.e. 6th September 1950. It would be further pertinent to note that though entry 18 of the Constitution (Scheduled Tribes) Order, 1950, came to be substituted by Act 10 of 2003, there is no corresponding change in the date 6th of September 1950, in regards to the definition of migrant from other state as occurring in sub-rule 1 of rule 5 of the Caste Certificate Rules 2003 is concerned, meaning

thereby that though new entries have been made in the Constitution (Scheduled Tribes) Order, 1950, the cutoff date for a person from outside the State to have started residing in this State remained unchanged. The rationale behind this is apparent from what is stated by the hon'ble Apex Court in *Marri Chandra Shekhar Rao* (supra) that 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.

31. It would be further material to note that in the year 2012, the State of Maharashtra has framed rules by virtue of power under Section 18 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012, (hereinafter referred to as “the Caste Certificate Rules, 2012”). The definition as contained in Rule 2 (e), and Rules 6 and 14 of the Caste Certificate Rules, 2012 being material are reproduced as under :

**“2. Definitions :- (1) In these rules, unless
the context otherwise requires,**

(a)

(b)

(c)

(d)

(e) **“deemed date”** means the 10th August 1950, that is the date of Presidential Order for Scheduled Castes; and the **21st November 1961** for

**De-notified Tribes (Vimukta Jatis) and Nomadic Tribe;
and the 13th October 1967 for Other Backward Classes
and Special Backward Category.**

6. **Issuance of Caste Certificate to migrated persons.-** (1) In case of persons migrated from other State or Union Territories to Maharashtra State, -

(a) The Competent Authority, if satisfied, may issue Caste Certificate to the applicants belonging to, Scheduled Caste in **FORM-6** and in case of Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category in **FORM – 10**, to an applicant who has migrated to Maharashtra State from any other State or Union Territory, on production of the respective Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes or Special Backward Category Certificate issued to his father or grand-father or relative by the concerned Competent Authority of that State;

(b) If the Competent Authority is of the opinion that before issuing such Caste Certificate in **FORM-10** to a migrated person, a detailed inquiry is necessary, then he may do so through the applicant's State of origin;

(c) A Caste Certificate holder who has migrated to the State of Maharashtra from the State of his origin for the purpose of seeking education, employment, etc., may be deemed to be the person belonging to Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribe (Vimukta Jati) or Nomadic Tribe or Other Backward Class or Special Backward Category, as the case may be, of the State of his origin and may be entitled to derive benefits from the State of his origin and Union Government, but he shall not derive any benefits from the State of Maharashtra.

Explanation. - For the purpose of sub-rule (1), “migrant from other State” means,-

(i) a person who has migrated to Maharashtra State from any other State or Union Territory **on or after the deemed date**;

(ii) a person whose caste is Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribe (Vimukta Jatis) or Nomadic Tribe or Other Backward Class or Special Backward Category in his original State, but not in Maharashtra State; and the person whose Caste is Scheduled Caste or Scheduled Caste converts to Buddhism or De-notified Tribe (Vimukta Jati) or Nomadic Tribe or Other Backward Class or Special Backward Category in the Maharashtra State as well as in his original State having his ordinary residence on **deemed date** in any State or Union Territory other than the Maharashtra State shall both be treated as migrants.

(2) The provisions of sub-rule (10), (11) and (12) of rule 5 shall *mutatis mutandis* apply in respect of the rejection of application of a migrated person.

14. **Verification of Caste Certificate** .- Any person desirous of availing of the benefits and concessions provided to the Scheduled Caste, Schedule Caste converts to Buddhism, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Categories for any of the purposes as mentioned in section 3 of the Act shall, invariably submit an application in **FORM-16** with an affidavit in **FORM 3 and FORM-17** for students, **FORM-18** with an affidavit in **FORM 3 and FORM-19** for employees or service purpose; **FORM-20** with an affidavit in **FORM 3 and FORM-21** for election purpose; or **FORM-22** with an affidavit in **FORM 3 and FORM – 23** for other purpose, as per his requirement, to the concerned Scrutiny Committee for verification of his caste claim and issue of Caste Validity Certificate, well in time :

Provided that, the Caste Certificate issued to migrant from other State and Caste or Community Certificates issued by Authorities of the States other than the State of Maharashtra, shall not be verified by such Caste Scrutiny Committee.

(emphasis supplied)

It would thus be apparent that specific provisions have been made in the Caste Certificate Rules of 2003 and 2012 regarding issuance of caste certificates and their validation insofar as migrants are concerned. Rule 5 (1) (c) of the Caste Certificate Rules, 2003 as well as Rule 6 (1) (c) of the Caste Certificate Rules, 2012 specifically mandate that caste certificate holder who has migrated to the State of Maharashtra from the State of his origin, for the purpose of seeking education, employment etc. shall not derive any benefit from/in the State of Maharashtra. Thus a prohibition has been imposed upon a migrant to seek any benefit available on account of reservation in the State of migration.

32. It is in light of the above position of law, and the Caste Certificate Rules 2003 and 2012 that the argument by learned Counsel Miss. Talekar to the effect that Nanded was a part of Hyderabad State in 1948, when the instrument of accession was signed and on coming into force of the States Reorganization Act, 1956, on 01/11/1956, the territorial region of Nanded was brought into the State of Bombay and subsequently, under the Bombay Reorganization Act, 1960, as on 01/05/1960, the State of Bombay was split into two parts and the territorial area of Nanded became merged into the State of Maharashtra and therefore, there was no

question of migration since both territories formed part of one and the same State has to be considered. The position as to the provisions of the States Reorganization Act, 1956 and of the Bombay Reorganization Act, 1960 has already been considered by this Court in ***Bamkinchandra (II)*** (supra) which has been approved by the Full Bench in ***Shweta Lal*** (supra). The Full Bench, also considered Rule 5 (1) (c) and the explanation appended thereto to the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 which reads as under :

“5. Grant of Scheduled Tribe Certificate to migrated persons.

(1) Migration from other States to Maharashtra State:—

(a)....

(b)....

(c) A Scheduled Tribe Certificate holder who has migrated to Maharashtra from the State of his origin for the purpose of seeking education, employment etc., will be deemed to be a Scheduled Tribe of the State of his origin and will be entitled to derive benefits from the state of his origin and not from the state of Maharashtra.

Explanation.—For the purpose of sub-rule (1), ***“Migrant from other State”*** means—

(i) a person who has migrated to Maharashtra State from any other State/Union Territory on or after the First Presidential Order i.e. 6th September 1950;

(emphasis supplied).

(ii) a person whose tribe is scheduled as a Scheduled Tribe in his original State, but not in Maharashtra State and the person whose tribe is scheduled as Scheduled Tribe in Maharashtra

State as well as in his original State having his ordinary residence on the date of the notification of Presidential Order scheduling his tribe has been in the State/Union Territory other than Maharashtra would both be treated as migrants”.

(emphasis supplied)

While considering the question whether a person who was not ordinarily resident as on the date of the relevant Presidential notification in the area that now constitutes the State of Maharashtra will be entitled to the benefit of reservation in the State, the Full Bench in ***Shweta Lal*** (supra) answered thus :

'12. It would thus be clear that insofar as State of Maharashtra is concerned, both classes of migrants will be treated as belonging to the Scheduled Tribe in the State of their origin and will be entitled to derive benefits in the State of their origin and not from the State of Maharashtra. The Explanation further makes it clear that the cut-off date is 6th September, 1950 even if there be some other subsequent Presidential Notification notifying some other tribes. Considering the explanation, what is relevant for considering is whether a person in the case of S.T. was ordinarily resident on 6th September 1950. Only such a person would be ordinarily resident in the geographical area now constituting the State of Maharashtra and will be entitled to the benefit of reservation in the State of Maharashtra'.

(emphasis supplied)

Thus, the cut-off date as enumerated in the Rules was considered to be inviolable.

33. In the instant case, the geographical area of Nanded, has merged in the State of Maharashtra on 01/05/1960, which would naturally mean that a person to claim the benefit of reservation ought to be a resident of the State of Maharashtra prior to the said date, which the petitioner, admittedly was not. Absolutely nothing has been placed on record to substantiate the plea that the forefathers of the petitioner were resident of Nanded and the father of the petitioner shifted to Hyderabad for the purpose of his employment, in absence of which this plea cannot be accepted. Even otherwise, Hyderabad State at that relevant time of which Nanded was a part was a separate State altogether. In the present case admittedly, the petitioner had migrated from Andhra Pradesh to Maharashtra on 24/05/1987 and was belonging to caste 'Munnurukapu' which was recognized as a Backward Class in the State of Andhra Pradesh. The same, however, does not appear to be recognized as such in the State of Maharashtra. Therefore, as on the date of the first Presidential order, in terms of the explanation to Section 5 (1) (c) of the Caste Certificate Rules, 2003 the petitioner Aruna Kudmulwar was not a resident of the State of Maharashtra.

34. The further contention that in the State of Maharashtra, the caste 'Munnurukapu' came to be recognized as Special Backward Class vide Notification dated 07/12/1994 and was granted the status of a Notified Tribe vide Notification dated 30/01/2014, on which dates as the petitioner Aruna Kudmulwar was a resident of State of Maharashtra and therefore was entitled to benefits as permissible to the Caste/Tribe, also runs contrary to the

Caste Certificate Rules, 2012. A perusal of the Caste Certificate Rules, 2012 demonstrate that the deemed date for Special Backward Classes has been specified as 13/10/1967 and that for Nomadic Tribe has been specified as 21/11/1961. The explanation to Rule 6 of the Caste Certificate Rule, 2012 specifically mandates that for the purpose of Sub Rule 1 of Rule 6 which deals with issuance of caste certificates to migrated persons, a migrant from other State would mean a person who has migrated to Maharashtra State on or after the deemed date i.e. 21/11/1961 for Special Backward Class and 13/10/1967 for Nomadic Tribe. Thus, the petitioner Smt. Aruna Kudmulwar having come to the State of Maharashtra in the year 1987 after her marriage, clearly fell within the definition of a migrant as per the mandate of Explanation (i) to Clause (c) of Sub Rule 1 of Rule 6 read with Rule 2(e) of the Caste Certificate Rules, 2012, and that being so, in light of the mandate of Clause (c) of Sub Rule 1 of Rule 6 of the Rules of 2012, she was deemed to be person belonging to the Caste/Tribe of the State of origin and prevented from deriving any benefits from the State of Maharashtra and thus, in light of the proviso to Rule 14 of the Caste Certificate Rules of 2012, the Scrutiny Committee was precluded from verifying the caste of the petitioner Aruna Kudmulwar. The Scrutiny Committee/respondent no.2 therefore in its majority order impugned dated 22/10/2018, though found the petitioner Aruna Kudmulwar to belong to the caste 'Munnurkapu' (O.B.C.), which was based upon the caste certificate issued by the Tahsildar, Ambarpeth, District Hyderabad, it rightly refused to verify the

certificate in light of the prohibition thereto as contained in the proviso to Rule 14 of the Caste Certificate Rules, 2012.

35. The matter can be viewed from another angle. The State of Maharashtra, has, since its constitution, from time to time, issued G.R's and circulars for inclusion of various castes/tribes/communities in various reserved categories. From 1967 to 2017, there are at least 82 G.R's and circulars relating to SC, OBC, N.T., V.J. and S.B.C. in the State by which various communities/castes/sub-castes have been recognised and given the benefit of reservation, the issuance of which can only be attributable to Articles 15(4) to (6) and 16(4), (4-A) and (6) of the Constitution. If the date of notification of each such G.R and circular, is taken into consideration and is applied to those persons, residing at that point of time in the State of Maharashtra, then the entire concept of 'reservation for citizens of the State', would be rendered redundant. The entire purpose of reservation is to grant benefit/privilege to castes/tribes/communities in the State, for their upliftment, as has been held by the Constitution Benches in ***Marri Chandra Shekhar Rao, Action Committee, Bir Singh*** (supra), which has been followed in ***Ranjana Kumari*** (supra) in light of the expressions 'with respect to any State or Union Territory', 'after consultation with the Governor' (where it is a State) and 'in relation to that State', for availing which benefit/privilege, the date of the Presidential notification, has been held to be the date, prior to which the person, ought to be the resident of the State, which date has remained constant, in spite of additions and deletions of castes/

tribes in the Presidential Order of 1950, which date, in the present case are the 'deemed' dates as defined in Rule 2(e) of the Caste Certificate Rules, 2012. If the argument of Miss Talekar, learned Counsel for the petitioner, is accepted, then all persons, who have migrated to the State of Maharashtra, and are residing in the State, prior to the date of each of such G.R and circular, would become entitled to the benefit of reservation in the State of migration (Maharashtra). The definition of "deemed date" as contained in Section 2 (e) of the Caste Certificate Rules, 2012, would also be rendered meaningless. Such a meaning would not only militate against the legislative intent of providing reservation for the socially, educationally and economically backward classes of the Citizens of the State, as required by Articles 15(4) to (6) and 16(4), (4-A) and (6) of the Constitution but would also be impermissible as held in *Marri Chandra Shekhar Rao, Action Committee, Bir Singh* and *Ranjana Kumari* (supra) by the hon'ble Apex Court and by the Full Bench in *Shweta Lal* (supra) and therefore such a course of action is clearly not permissible in law. The arguments as advanced in this regard, by Miss. Talekar, learned Counsel for the petitioner, must fail for the above reason, too.

36. It is material to note that *Radhabai Charansingh Chaware* as well as *Preeti Gopalrao Kamble*, (supra) on which reliance has been placed by Miss Talekar, learned Counsel for the petitioner clearly stand overruled by the judgment of the Full Bench in *Shweta Lal* (supra). Insofar as the judgment of the Hon'ble Apex Court in *Sudhakar* (supra) is concerned, it has left the question

framed unanswered, as held and found in *Bankimchandra* (II) and as such the observations in *Radhabai Charansingh Chaware* as well as *Preeti Gopalrao Kamble*, (supra) relying on *Sudhakar* (supra) are clearly unfounded and untenable in law. Thus, *Sudhakar*, *Radhabai* and *Preeti* (supra) are of no assistance to Miss. Talekar, learned Counsel for the petitioner. In fact the Full bench in *Shewta Lal* (supra) overrules *Hitesh Murkute*, *Santosh Padoti*, *Sheetal Dupare*, *Radhabai Charansingh Chaware* and *Preeti Gopalrao Kamble* (Supra).

37. The further reliance placed by *Purushottam Babulal Gurde*, (2017) SCC Online Bom. 6498, is of no assistance to the argument advanced by Miss. Talekar, learned Counsel for the petitioner for the reason that the issue under consideration in the present petition was not decided there, but the matter was merely remanded to the Scrutiny Committee, for decision afresh, without considering the judgments above.

38. In *Shardabai Sanjay Patil @ Shardabai Dadarao Mahajan Writ Petition No.2756/2011 decided on 28/2/2019*, one of us (Gangapurwala, J.) had the occasion to consider a peculiar situation where, the parents of the petitioner, belonging to 'Mali, community originally claimed to be permanent resident of village Waghod, Tq. Raver, which was in the State of Maharashtra. They however even prior to reorganization had migrated to Shahapur, Taluka and District Burhanpur. The caste 'Mali' was recognized as a Other Backward Class in the State of Madhya Pradesh as well as in the State of Maharashtra, in which the petitioner, who was the

original resident of Madhya Pradesh after her marriage came to reside. Relying upon *Kusum Vs. State of Maharashtra, AIR 2009 SC 1080* it was contended that the petitioner would be entitled to the benefit of reservation in the State of Maharashtra. Upon taking into consideration the judgment in *Action Committee* (supra) and analyzing *Kusum* (supra) as having held that if a person had migrated prior to the year 1967 then she would be held to be a permanent resident of Maharashtra entitled to all benefits of Other Backward Class and considering that the migration to the State of Maharashtra by the petitioner was after the Notification, the petition came to be dismissed. The dictum in *Shardabai Patil* (supra) would equally apply to the present case as the petitioner, admittedly, has migrated to the State of Maharashtra in the year 1989 after her marriage which is obviously after the deemed date as enumerated in Rule 2 (e) of the Caste Certificate Rules, 2012.

39. Any circular issued by the Election Commission cannot have the effect of overriding the mandate of law as flowing from Articles 341 and 342 of the Constitution and the dictum of law as enunciated in *Marri Chandra Shekhar Rao* (supra).

40. Insofar as the impugned judgment dated 22/10/2018 having been given by majority of 2 : 1, one may only refer to Sub Rule 3 of Rule 18 of the Caste Certificate Rules, 2012, which provides that the decision of the Committee shall be by majority. The majority view of the impugned judgment therefore is clearly within the parameters of Rule 9 Sub Rule 3 of the Caste Certificate Rules, 2003 as has been held in *Inderchand Hiranman Sattawan*

(Pardeshi) Vs. State of Maharashtra reported in 2012 (3) ALL MR 637 and is also within the framework of Rule 6 of the Caste Certificate Rules, 2012 and therefore, cannot be faulted with.

41. Though Mr. Thombre, learned Counsel for the respondent no.4 in Writ Petition No.12295/2018, who is the petitioner in Writ Petition No.1753/2019 has sought to set aside the majority view, however, the same is clearly in consonance with the provisions of Rule 6 of the Caste Certificate Rules, 2012, which provides issuance of a caste certificate to migrated persons, based upon the certificate issued by the competent authority of the State of origin.

42. In the result, both the writ petitions fail and are hereby dismissed. Needless to say that any interim order which may have been passed, stands vacated. No costs.

(AVINASH G. GHAROTE, J.)

(S.V. GANGAPURWALA, J.)

Ms. P.S. Talekar, learned Counsel for the petitioner prays for continuation of the interim order dated 01/11/2018.

Mr. S.S. Thombre, learned Counsel for the respondent no.4 opposes the same.

In light of our finding that the benefits of reservation, were not available to the petitioner, any continuation of the interim

order, would amount to negation of the finding, in light of which, the request for continuation of the interim order, stands refused.

(AVINASH G. GHAROTE, J.)

(S.V. GANGAPURWALA, J.)

Wadkar