
(2013) 12 AHC CK 0096

Allahabad High Court

Case No: C.M. W.P. No. 47279 of 2012

Poonam Gour

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Dec. 19, 2013

Citation: (2014) 1 ADJ 48 : (2014) 102 ALR 839 : (2014) 4 AWC 3387 : (2013) 4 AWC 48

Hon'ble Judges: V.K. Shukla, J; Suneet Kumar, J

Bench: Division Bench

Judgement

V.K. Shukla and Suneet Kumar, JJ.

Poonam Gour D/o Ram Kewal resident of village and post Sihaitpur District Gorakhpur has approached this Court with a request to direct the State Level High Power Caste Scrutiny Committee, to verify the caste certificate of the petitioner of Caste Gond sub Caste Dhuriya in pursuance of the report of vigilance dated 14.6.2011 and to quash the order dated 14.10.2011 passed by State Government, Social Welfare Department wherein State Level High Power Caste Scrutiny Committee has asked the Committee constituted under Chairmanship of District Magistrate, to make inquiry and to submit its opinion to the State Government. During the pendency of the aforesaid writ petition, petitioner, by means of first amendment application, has proceeded to challenge the validity of report dated 6.8.2013 submitted by District Level Caste Scrutiny Committee, disallowing the claim of the petitioner by accepting petitioner to be belonging from "Gond" caste.

2. Thereafter by means of second amendment application, as the State Level Caste Scrutiny Committee has also taken decision, prayer has been made to quash the order dated 16.8.2013 passed by State Level Caste Scrutiny Committee and further prayer has been made to direct the Moti Lal Nehru Medical College, Allahabad to declare the result of M.S. Course passed by the petitioner in the year 2001, the result whereof has been withheld.

3. Brief background of the case as is emanating from the record in question is that petitioner claims that she belongs to Gond caste sub caste Dhuriya and she has completed M.B.B.S. course in the year 1996 from King George Medical College (K.G.M.C.) Lucknow. Petitioner submits that she has undertaken Post Graduate entrance examination for obtaining Master's Degree in year 2001 and has been selected to undertake M.S. Course from Moti Lal Nehru Medical College Allahabad. Petitioner submits that at the point of time when she has been accorded admission in M.S. Course, prior to it for enabling her to undertake said entrance examination authorities on request of petitioner has issued fresh caste certificate to her showing that petitioner belongs to "Gond" caste. Petitioner submits that thereafter, in the year 2000 her caste certificate in question has been cancelled on 14.3.2000 and in such a situation in this background she was not permitted to undertake examination and then petitioner filed Civil Misc. Writ Petition No. 11536 of 2000 (Dr. Poonam Gour v. Principal, M.L.N. Medical College, Allahabad) and in the said writ petition petitioner has been accorded permission to pursue her M.S. Course. Petitioner submits that said writ petition is still pending and she has completed her M.S. Course but her result has not been declared so far due to non-finalization of issue of her caste certificate.

4. Petitioner submits that in the said direction she has been requesting that her caste status should be cleared and at the said point of time petitioner has gone to the extent of filing Civil Misc. Writ Petition No. 16817 of 2001 (Poonam Gour v. Collector, Gorakhpur and others) and in the said writ petition this Court has proceeded to pass order directing to make an application before the Chief Secretary, Government of Uttar Pradesh Lucknow and upon such application being made, the Chief Secretary, Government of Uttar Pradesh was asked to refer the matter to the High Powered Committee constituted for determining the nature and status of the petitioners' community as to whether she is covered under the said category or not and to take appropriate decision. Petitioner submits that an application has been moved in the said direction and the copy of the judgment has also been supplied to the Chief Secretary, Government of Uttar Pradesh, Lucknow. Joint Secretary, U.P. Government Social Welfare Lucknow thereafter giving reference of letter dated 5.8.2010 and giving reference of the decision of this Court in Civil Misc. Writ Petition No. 16817 of 2001 dated 9.4.2010 wrote letter addressed to Director, Backward Classes Social Welfare Department Lucknow and mentioned therein that to verify at the Directorate Social Welfare Department there is no vigilance cell constituted to undertake exercise for verification of caste status of Scheduled Caste and Scheduled Tribes candidates as no one of the Home Department is posted therein and accordingly claim of the petitioner should be got examined by the vigilance cell constituted under Directorate meant for Backward Classes and comments be got received.

5. Thereafter vigilance cell working under the Directorate, Backward Classes Lucknow made its inquiry and submitted its report mentioning therein that it would be appropriate in case petitioner is issued certificate from Scheduled Tribes and accordingly report in

question has been submitted and thereafter same has been forwarded to the Director. Director at the said point of time, proceeded to address a letter to State Government that large scale complaints are being received and matter should be got examined by the District Level Caste Scrutiny Committee. State Government accepted the said request.

6. On receiving of the said report in question, the District Level Caste Scrutiny Committee on the asking of State Level Scrutiny Committee submitted its report on 6.8.2013 and therein altogether different view was taken that petitioner has failed to substantiate her claim that she is entitled for caste certificate of belonging from Scheduled Tribes category. Thereafter after the said report in question has been submitted the State Level Caste Scrutiny Committee has taken up the matter and has not at all accepted the request of petitioner for accepting her to be from Scheduled Tribes Category and it has been mentioned therein that there is no reason to take different or contrary view as has been taken by the District Level Caste Scrutiny Committee and accordingly petitioner was not at all entitled for caste certificate of her being from Scheduled Tribes Category.

7. To the said averments which has come forward/counter-affidavit has been filed and to the said counter-affidavit, rejoinder affidavit has been filed and thereafter matter has been taken up for final hearing and disposal with the consent of the parties.

8. Sri Ranjit Saxena, learned counsel for the petitioner submitted with vehemence that in the present case State Level High Power Caste Scrutiny Committee has failed to perform and discharge its duty at the point of time when said committee has proceeded to form ex-parte opinion that petitioner is not at all from Scheduled Tribes category and accordingly decision in question suffers from procedural impropriety and specially in the backdrop of the case that once vigilance cell has submitted report in favour of the petitioner then there was no occasion or justification to take different and contrary view, as has been done in the present case and accordingly present writ petition in question deserves to be allowed, and caste certificate of being from Scheduled Tribe, be issued accordingly, and all benefits attached to the same be also extended.

9. Countering the said submission, learned Standing counsel submitted that in the present case on the proper analysis of the evidence available on record, rightful view has been formed that petitioner is not a member of Scheduled Tribes category and cannot be accepted to be from the said category and accordingly no interference should be made by this Court.

10. In order to answer the issue, as has been raised, this Court proceeds to examine the relevant provision of the Constitution of India that covers the field:

Articles 341 and 342 of the Constitution of India read as under:

341. Scheduled Castes.-

(1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State[or Union territory, as the case may be].

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

342. Scheduled Tribes.-

(1) The President [may with respect to any State [or Union territory], and where it is a State after consultation with the Governor thereof] by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled tribes in relation to that State[or Union territory, as the case may be].

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

11. By virtue of authority vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Caste or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are virtually identical, as what has been said in relation to Article 341 *mutatis mutandis* applies to Article 342 also. The prime object of the said Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Article 366(24) and 366(25) of the Constitution of India. In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the Presidential Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 for the first time and then, subsequently, Orders have been issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued introduced, by Amendment Acts passed by the Parliament.

12. On plain reading of the language of these Articles same shows (1) the President under Clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) Under Clause (2) of the said Articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. Under the scheme of things provided for, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said Articles.

13. In including castes and tribes in Presidential Orders, the President is authorized to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them could be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. States in such matters had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to entire State or parts of State. The underlying 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 and Presidential order in the said direction was to be accepted as final.

14. 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 the Parliament that is competent to amend the Orders issued under Articles 341 and 342.

15. In exercise of powers conferred by Clause (1) of Article 341 of Constitution, the President has issued Constitution (Schedule Caste) Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. In the said order in relation to Uttar Pradesh, the castes, races or tribes or parts of, or groups within, castes or tribes has been specified in Schedule, Part XVIII, and therein entry 36 relates to Gond, accepting Gond as schedule caste. Thereafter by means of Presidential Order, the Schedule Castes and Schedule Tribes Order (Amendment) Act, 2002, has been published on 7.1.2003, providing therein for inclusion in the lists of Schedule Tribes, of certain tribes or tribal communities or part of or group within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of areas

restrictions and bifurcations and clubbing of entries imposition of area restriction in respect of certain castes in the list of Schedule Castes and the exclusion of certain castes and tribes from the list of Scheduled Castes and Scheduled Tribes, in relation to various States including Uttar Pradesh. Accordingly, pursuant thereto in the Constitution (Schedule Tribes) (Uttar Pradesh) Order, 1967, after entry 5, following insertion has been made:

6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Mahrajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jaunpur, Ballia, Ghazipur, Varanasi, Mirzapur and Sonbhadra)

7. Kharwar, Khairwar (in the district of Deoria, Ballia, Ghazipur, Varanasi and Sonbhadra).

16. Under the Constitutional scheme of things provided for orders once issued, cannot be varied by subsequent order or notification even by the President except by law made by Parliament.

17. Apex Court on numerous occasions, encountered with such an issue has answered in following terms.

In [B. Basavalingappa Vs. D. Munichinnappa](#), a Constitution Bench of Apex Court held as follows:

It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of Caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order[see Aray (Mala) Dakkal (Dokkalwar) etc.] Therefore generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the Order." Thereafter looking to the peculiar circumstances of the case, the Apex Court went on to say that:

The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all. The Order refers to a scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it

is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstance therefore which necessitated the taking of evidence to determine which was the caste which was meant by the word "Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956.

18. Once again Constitution Bench of the Apex Court in a later decision of [Bhaiyalal Vs. Harikishan Singh and Others](#), . did not accept the plea of the appellant that although he was not a Chamar as such he could claim the same status by reason of the fact that he belonged to Dohar Caste which is sub-caste of Chamar. Even after referring to the case of Basavalingappa (supra) it was held that an enquiry of that kind would not be permissible in the light of the provisions contained in Article 341 of the Constitution. In that case the appellant's election was challenged inter alia on the ground that he belonged to the Dohar Caste which was not recognized as a Scheduled Caste for the district in question and so his declaration that he belonged to the Chamar Caste which was a Scheduled Caste was improper and was illegally accepted by the Returning Officer. The Election Tribunal declared that the election was invalid. On appeal the High Court confirmed the same. Apex Court thereafter also dismissed the appeal pointing out that the plea that the Dohar Caste is a sub-caste of the Chamar Caste, could not be entertained in view of the Constitution Scheduled Castes Order, 1950 issued by the President under Article 341 of the Constitution. It is also stated that in order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. The notification referred to Chamar, Jatav or Mochi. The Court observed that the enquiry, which the Election Tribunal could hold was whether or not the appellant is a Chamar, Jatav or Mochi and held thus:

The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341.

19. Thereafter Apex Court, noted that allowing candidates not belonging to Scheduled Caste or Scheduled Tribes to have advantage and benefit of reservation, either in admissions or appointments leads to making mockery of the very reservation against the mandate and scheme of Constitution:

In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognizing and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

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

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.
2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.
3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.
4. It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in [Bhaiya Ram Munda Vs. Anirudh Patar and Others](#), . and Dina v. Narayan Singh 38 ELR 212., did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter.

20. Apex Court, in the case of [State of Maharashtra Vs. Milind and Others](#), ., reiterated the same principle, once again that Presidential Order can be amended only by the Parliament, and no one be it authority, Courts or tribunals have any jurisdiction to alter the said list. Relevant extract of the said judgment is as follows:

Thus it is clear that States have no power to amend Presidential Orders. Consequently a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Schedules Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; 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 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 the Parliament and that too by making a law in that regard. The President had the benefit of consulting 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 the Parliament that is in a better position to know having 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 enquiry 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. In order to gain advantage of reservations for the purpose of Articles 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the Courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or

the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

21. Various issues were coming before Apex Court wherein spurious tribes and persons not belonging to scheduled tribes were snatching away the reservation benefits given to genuine tribals, by claiming to belong to scheduled tribes, and thus making constitutional provisions redundant and otiose in such a situation and in this background, in order to see and ensure that caste certificates issued be scrutinised with utmost expedition and promptitude and there should be proper scrutiny. Apex Court in the case of [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), .. issued directives for constitution of Caste Scrutiny Committee and issued fifteen directions as follows:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of Scheduled Tribes, the Research Officer who has intimated knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims.....
6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or

wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed.....After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the serial status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

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

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an

offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

22. Pursuant to directive issued by the Apex Court in the case of [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), ., the State Government on 5.1.1996 has provided the procedure that is to be adhered to in the matter of grant of Caste Certificates and other allied and incidental matters connected therewith, said decision in question is as follows:

23.. Thereafter, as large number of issues connected with the veracity of caste certificates were coming before the Courts and the authorities, in order to streamline the situation, at Divisional Level, Appellate Forum, headed by Commissioner had been constituted, vide Government Order dated 27.1.2011, to resolve the disputes relating to the validity of caste certificate and thereafter to make things more transparent and smooth another Government Order dated 28.2.2011 has been issued, on 28.2.2011, wherein District Level Caste Scrutiny Committee has been constituted with the District Magistrate as its Chairman and after decision of District Level Caste Scrutiny Committee, Appeal has to lie before the Appellate Forum, headed by Commissioner. This entire exercise has been undertaken, pursuant to directives issued by this Court, firstly in the case of Taramuni Tharu v. State of U.P. decided on 23.9.2010, Civil Misc. Writ Petition (M/B) No. 1611 of 2008, culminating in issuance of Government Order dated 27.1.2011, and in the case of Tharu Shakti Samiti v. State of U.P. (P.I.L.) No. 1396 of 2011, pursuant to directives issued, Government Order dated 28.2.2011 has been issued.

24. Caste Scrutiny Committee has accordingly been constituted at different level, set up for specific purpose as it serves social and constitutional purpose to prevent fraud on the Constitution. Apex Court in the case of [State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another](#), . toeing the same lines has taken the view that Caste Scrutiny Committee is a quasi-judicial body and it has been set up for a specific purpose to prevent fraud on Constitution. Relevant extract of the aforesaid judgment is being extracted below:

The Caste Scrutiny Committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purposes. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the Superior Courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence. Moreover the nature of evidence to be adduced would vary from case to case. The rights of a party to adduce evidence cannot be curtailed. It is one thing to say how a quasi-judicial body should appreciate evidence adduced before it in law but it is another thing to say that it must not allow adduction of oral evidence at all. It was furthermore not proper to suggest that all such bodies should be brought within the purview of Article 235 of the Constitution of India or only judicial officers should be appointed.

25. Thereafter Apex Court in the case of [Dayaram Vs. Sudhir Batham and Others](#), . decided on 11.10.2011 has proceeded to mention that directives issued in the case of Madhuri Patil (supra) were towards furtherance of the constitutional rights of Scheduled Caste/Scheduled Tribes, as the object of the same is to ensure that only genuine members of Scheduled Caste or Scheduled Tribe were afforded or extended the benefits as same are necessarily inherent to the enforcement of fundamental rights. In giving such direction, Apex Court neither re-wrote, the Constitution nor resorted to judicial legislation. The directions issued are intrinsic to fulfilment of fundamental right, and to ensure that eligible citizens entitled to affirmative action alone derive benefits of such action. Directions 1 to 15 have been reiterated to be valid and laudable, and it has been clarified that nothing contained in paragraph 15 shall be construed as placing any fetters in dealing with the writ petitions dealing with caste certificates and accordingly in reference of answer to question No. 2 has held as follows:

22. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the scrutiny committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the scrutiny committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the scrutiny committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders. The scrutiny committee is not an adjudicating authority like a Court or tribunal but

an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. As this Court found that a large number of seats or posts reserved for scheduled castes and scheduled tribes were being taken away by bogus candidates claiming to belong to scheduled castes and scheduled tribes, this Court directed constitution of such scrutiny committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding S.Cs./S.Ts. status. This entire, scheme in Madhuri Patil will only continue till the concerned legislature makes appropriate legislation in regard to verification of claims for caste status as S.C./S.T. and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

23. Having regard to the scheme for verification formulated by this Court in Madhuri Patil, the scrutiny committees carry out verification of caste certificates issued without prior enquiry, as for example the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self-affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the scrutiny committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one and a half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter.

26. Apex Court, once again in the case of [Collector, Bilaspur Vs. Ajit P.K. Jogi and Others](#), ., decided on 13.10.2011 and in, has reiterated the situation, that once an issue is raised about social status of ones caste, then verification proceedings are required to be undertaken by duly constituted Scrutiny Committee, who shall undertake the exercise of verification/scrutiny of social status certificate. Such issues, on being raised are required to be answered and cannot be shut. Apex Court, once again in the case of [Anand Vs. Committee For Scrutiny and Verification of Tribe Claims and Others](#), ., decided on 8.11.2011 and reported in, has proceeded to law down broad parameters that has to be kept in view, while dealing with caste claim, as follows:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first genera-Hon ever to attend school, the availability of any

documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

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

27. On the parameter of the aforesaid Government Order dated 5.1.1996 and on the parameter of the dictum as has been laid down by the Apex Court from time to time, it is reflected that in the present case initially petitioner has been issued Caste Certificate on 7.4.1998 by Tehsildar, Bansgaon mentioning therein that she belongs to Scheduled Caste category and subsequent to the same her caste certificate in question has been cancelled on 14.3.2000 by Tehsildar, Bansgaon and said order has been affirmed by Sub-Divisional Magistrate on 30.6.2000. Thereafter pursuant to directives issued by this Court claim of petitioner has been referred to the State Level Caste Scrutiny Committee for making inquiry into the matter. The State Level Caste Scrutiny Committee got the matter examined by the vigilance cell and after report of vigilance cell has been received on the request of the Director S.C./S.T. Welfare directives have also been issued to get report from the District Level Caste Scrutiny Committee and after report in question has been so received, the State Level Caste Scrutiny Committee has taken decision on the subject-matter, and as said decision has gone adverse to the petitioner, she is before this Court.

28. Petitioner's precise case before this Court is that once Vigilance Cell had submitted its report in favour of petitioner then there was no occasion for the State Level High Power Caste Scrutiny Committee as well as District Level Caste Scrutiny Committee to take different or contrary view and the only option left open to them was to verify the same and ensure restoration of caste certificate in favour of petitioner of being Scheduled Caste Category (now notified as Scheduled Tribe category)

29. In the present case, facts as are reflected that as per the policy decision of the State Government dated 5.1.1996 and as per the judgment of Apex Court in the case of Kumari Madhuri Patil (supra), directives have been issued to constitute Vigilance cell consisting of Superintendent of Police as over all in-charge and such number of Police Inspectors to investigate into the social status claims. Separate Vigilance Cell is required to be constituted under the Directorate of S.C./S.T. Welfare as well as under the Directorate of O.B.C. Welfare. Vigilance Cell is required to investigate the claim, by collecting facts, examining the record, examining relations or friend who have knowledge about the social status of candidate. Thereafter Director concerned, on receipt of the report from the vigilance officer is required to confirm the caste claim.

30. Here in the present case accepted position is that as far as Directorate of Social Welfare Scheduled Caste and Scheduled Tribes is concerned there has been no Vigilance cell constituted and in view of this inquiry in question has been out sourced to the Vigilance cell working under the Directorate of Other Backward Classes on the strength of the order dated 30.8.2010 passed by the State Government. Vigilance Cell accordingly conducted enquiry and submitted its report on 14.6.2011 mentioning therein that from the evidence it is reflected, that petitioner hails from "Gond" caste with sub-caste "Dhuria", and accordingly, it would be appropriate to issue her caste certificate as has been claimed by her. After the said report has been received, on 31.7.2011, State Government asked the concerned Directorate, to take action in consonance with Government Order dated 5.1.1996. The Director concerned, vide letter dated 19.8.2011, informed the State Government that large scale complaints are being received from the Districts, of caste certificates being procured of Gond and Kharwar caste, in view of this, it would be more appropriate, if matter is got examined by District Level Caste Scrutiny Committee constituted under Government Order dated 28.2.2011, and requisite orders be passed in the said direction. Thereafter, on 14.10.2011, District Level Caste Scrutiny Committee was asked to take decision in the light of the report of Vigilance Cell, comments submitted by District Magistrate, facts and figures submitted by petitioner in order to substantiate her claim. The District Level Caste Scrutiny Committee, considered the matter and submitted its report, contrary to the claim as set up by petitioner, on 6.8.2013 and the said report has been affirmed by the State. Level Caste Scrutiny Committee.

31. Once Vigilance department conducted inquiry and submitted its report in favour of the petitioner then should that have been end of the matter by treating the same as conclusive without there being any discretion left with the authorities who are to put final

seal on the veracity of caste certificate.

32. In normal course of the business, it would have been the situation but here after report has been submitted by the Vigilance department the Director of the concerned department who was obligated to confirm the report himself asked the State Government by apprising that large scale complaints were being made in respect of caste certificates specially in reference of "Gond" and "Kharwar" caste and as such as at local level also as of now as there is District Level Caste Scrutiny Committee report should also be called for and here exactly the same has been done. Director before whom report in question has been submitted by the Vigilance department is not always duty bound to accept the same specially when there are other material before him to take different or contrary view or ask for further investigation in the matter. Director has a right to take different view but same should be preceded by reasons. Director is not supported to act as a rubber stamp, rather he has to be alive to the situation and specially when matter pertains to stop fraud on the constitution. Here Director in view of various reports received by him of manipulation being made by spurious incumbents claiming them to be either of "Gond" or "Kharwar" caste has asked the State Government to get inquiry conducted by the District Level Caste Scrutiny Committee and in enquiry made altogether different conclusions have been drawn totally contrary to the report of Vigilance Cell. District Level Caste Scrutiny Committee as well as State Level Caste Scrutiny Committee are not at all always duty bound to accept report so submitted by the Vigilance Cell blindly and they have to make independent assessment of evidence based on historical background of caste/tribe in question, oral evidence adduced as well as documentary evidence adduced. Caste Scrutiny Committee is to provide full opportunity of hearing to an incumbent who is claiming to be from a particular caste/tribe as scrutiny committee is not an adjudicating authority rather its function is administrative in nature, which verifies the fact investigates into specific claim (of caste/tribes) status and ascertains whether the caste/tribal claims is correct or not and in view of this submission as has been made by the petitioner that after vigilance report has been received same should be accepted as conclusive cannot be accepted in the facts and circumstance of the case in hand.

33. The next issue to be answered in the present case is as to whether principle of natural justice has been violated or not at the point of time when decision has been taken by the State Level Caste Scrutiny Committee.

34. Record in question reflects that report of District Level Caste Scrutiny Committee has been submitted on 6.8.2013 to the State Level Caste Scrutiny Committee. Said report in question has been considered by the State Level Caste Scrutiny Committee on 13.8.2013. Last hearing that took place before State Level Caste Scrutiny Committee has been on 1.8.2013 and thereafter at no point of time after receiving said report of District Level Caste Scrutiny Committee in question any opportunity of hearing has been provided to the petitioner.

35. Once hearing took place on 1.8.2013 before the State Level Caste Scrutiny Committee and the matter was adjourned and thereafter report has been received on 6.8.2013 then it was incumbent and obligatory on the part of the State Level Caste Scrutiny Committee to have provided opportunity of hearing to the petitioner to have her say to the report dated 6.8.2013, in view of this it is writ apparent that procedure that has been adopted by the State Level Caste Scrutiny Committee violates the principle of natural justice.

36. Rule of fair play demanded that copy of the report of District Level Caste Scrutiny Committee ought to have been supplied to the petitioner and in case petitioner has anything to say against the aforesaid report in question then petitioner could have her to say in the matter. In view of this decision making process as adopted by State Level Caste Scrutiny Committee is not being approved of and is bad.

37. Coming to the merit of the case, this much is reflected that State Level Caste Scrutiny Committee has proceeded to mention that Gond tribe were found in the southern part of the district Mirzapur, presently said part is in district Sonbhadra Kaimoor mountain range and same was epicenter of the aforesaid tribe in question. This has also been mentioned that in the other part of the State of U.P. incumbents declaring themselves to be Gond, originally they are "Kahar" and belong to O.B.C. category. It has also been mentioned that all these incumbents who describe themselves as Gond their sub-caste is Kahar and all these incumbents are originally resident of Gorakhpur. It has also been mentioned that petitioner has failed to substantiate from evidence that its culture, religion, language has any affinity with Gond tribe. Further mention has been made that all public documents so maintained clearly pointed out that petitioner is Kahar, which is recognized as "Other Backward Class" in the State of Uttar Pradesh.

38. In the present case, this much is reflected that petitioner has been insisting from the very beginning that her sub-caste is "Dhuriya" of caste "Gond" and further had proceeded to mention that caste "Gond" has got sub-caste "Dhuriya", Nayak, Ojha, Pathari, Rajgond and in the year 2002, "Gond" with various specified sub-caste has been included in Scheduled Tribes category. Petitioner submits that all these documents filed by the petitioner has not been considered.

39. In the present case, this Court finds that exhaustive consideration has not been made on the issue as has been raised by the petitioner as there is nothing on record to show and substantiate that Gond caste in whose favour recommendation has been made by the State Government to include them in scheduled caste initially and then to include them in scheduled tribes as to whether petitioner has got any ethnological connection with the same in any manner or petitioner has got all together different trail i.e., she is a Kahar, having remotest connection with the said caste/tribe as referred to in Presidential Order.

40. Here on admitted position, as the order passed by the State Level Caste Scrutiny Committee has been passed in violation of principle of natural justice, accordingly the order dated 16.8.2013 is hereby quashed and set aside and the State Level Caste Scrutiny Committee is directed to decide the matter afresh with next three months, keeping in view the broad parameters, as has been fixed by the Apex Court in the case of *Anand v. Committee for Scrutiny and verification of Tribes* (supra).

41. Petitioner is submitting at last that she has already passed M.B.B.S. Course in the past and has taken admission in M.S. course and has also undertaken examination in question though on the strength of interim order passed by this Court in the year 2001 and since then more than 12 years period have elapsed, in such a situation and in this background her result be directed to be declared. Petitioner submits that accepting for the purposes of case, that her claim would be rejected finally, even then directives can be issued for conferment of her degree, as Apex Court in the matters wherein finally caste certificate has not been verified has proceeded to accord relief, when courses have been pursued/completed. This Court feels that agony of the petitioner should also come to an end on the same lines as has been settled by Apex Court in the case of [State of Maharashtra Vs. Milind and Others](#), ., [Civil Appeal No. 2294 of 1986 decided on 28.11.2000)]; wherein Apex Court has proceeded to mention that nobody is to be benefited in the matter of annulment of her admission as huge amount has been spent on each candidate for completion of medical course. Similar view has been taken in the case of [Dayaram Vs. Sudhir Batham and Others](#), ; [Priya Gupta Vs. State of Chhatisgarh and Others](#), . Accordingly in the present case also result be declared. Said exercise be completed by the concern authority within a period of two months from the date of presentation of certified copy of the order passed by this Court and it is made clear that petitioner would not get any benefit of caste/tribe, as same would be totally dependent on outcome of the decision State Level Caste Scrutiny Committee. In terms of above observations and directions present writ petition is allowed. Petition Allowed.