**(2010) 12 AP CK 0108**

**Andhra Pradesh High Court**

**Case No:** Election Petition No. 20 of 2009

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| Regu Maheswara Rao | | APPELLANT |
| | Vs | |
| Vhyricherla Kishore Chandra Surayanarayana Deo and Others | | RESPONDENT |

**Date of Decision:** Dec. 31, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Constitution of India, 1950 - Article 341, 342, 366
- Evidence Act, 1872 - Section 11, 35, 45, 47, 61
- Land Acquisition Act, 1894 - Section 51A
- Registration Act, 1908 - Section 57
- Representation of the People Act, 1951 - Section 100, 101, 5, 57, 80

**Citation:** (2011) 2 ALD 536

**Hon'ble Judges:** K.C. Bhanu, J

**Bench:** Single Bench

**Advocate:** Bojja Tarakam, for the Appellant; B. Adinarayana Rao, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

K.C. Bhanu, J.

This petition is filed u/s 81 r/w Section 5(a), 100(1)(a) and (d) (i) of the Representation of the People, Act, 1951 (for short ''the Act 1951'') to declare the election of the 1st Respondent to 18 Araku Lok Sabha (S.T.) Parliamentary Constituency to be void and set aside the same and further direct the Respondent No. 12 to initiate proceedings for recovery of amount from 1st Respondent for the period enjoyed by him as Member of Lok Sabha.

2. Brief facts, that are necessary for disposal of the present petition may be delineated as follows:

The election Petitioner is challenging the election of 1st Respondent to 18 Araku Lok Sabha (S.T.) Parliamentary Constituency. The election to the said Parliamentary Constituency was held on 16-04-2009 and 1st Respondent was fielded from Indian National Congress Party. Respondents 2 to 11 are the other contesting candidates from different parties and as independents. The results of the said election was declared on 16-05-2009 and in the said election, the 1st Respondent was declared elected as Member of Lok Sabha from 18 Araku Lok Sabha (S.T.) Parliamentary Constituency. The election Petitioner is a registered voter and an elector from Ward No. 2, Booth No. 36, Sl. No. 841 of Salur Municipality, Salur Assembly Constituency, which comes under Araku Lok Sabha Parliamentary Constituency. The 1st Respondent is a permanent resident of Fort Kurupam, Kurupam Mandal, Vizianagaram District. He hails from a Kshatriya family. The family is also of a Zamindar. It was known in the entire district of Vizianagaram and also in the north coastal districts that the 1st Respondent and his Vyricherla family belongs to Kshatriya caste and they were treated in the districts as Kshatriya otherwise known as Rajus only. There is Anr. family by name Shatrucharla in Vizianagaram District, which also belong to Kshatriya caste. Both the families are related to each other. The Vyricherla family is also related to Poosapati family of Vizianagaram district, which also belong to Kshatriya caste. To the knowledge of the Petitioner, neither the 1st Respondent nor any member of his family has any marital or other relations with any one of the family belonging to Scheduled Tribes in either Vizianagaram District or any other agency area in the State of Andhra Pradesh.

3. The 18 Araku Lok Sabha (S.T.) Parliamentary Constituency is reserved for Scheduled Tribes in the elections held in the year 2009 after delimitation. Since the Constituency is reserved for Scheduled Tribes, only a member belonging to any one of the Scheduled Tribes can only contest the election. Since the 1st Respondent does not belong to Scheduled Tribe of Vizianagaram District or for the matter in any other parts of India, he is not qualified to contest from the 18 Araku Lok Sabha (S.T.) Parliamentary Constituency. u/s 5(a) of the Act, 1951, the 1st Respondent is not qualified to be chosen to fill a seat in a Legislative Assembly in the State of Andhra Pradesh, since he is not a member of any of the tribes in the State of Andhra Pradesh and contested in a seat reserved for the Scheduled Tribes. Since the 1st Respondent was declared elected from the said Constituency and there is a disqualification against him from contesting from the said constituency, the election held to the said constituency has thus become null and void.

4. The Petitioner having come to know that the 1st Respondent does not belong to any one of the Scheduled Tribe community, lodged a petition before the District Collector, Vizianagaram on 01-12-2005 to conduct enquiry about the social status of 1st Respondent. Before filing the said petition under A.P. (SC,ST & B Cs) Regulation

of Issue of Community Certificate Act, 1993 (Act No. 16 of 1993), the election Petitioner gathered information both oral and documentary to establish that the 1st Respondent belongs to Kshatriya caste, but not to any one of the Scheduled Tribe community. In the registered documents No. 3 of 1901, 125 of 1902 and 127 of 1902, on the file of the Sub Registrar, Parvathipuram, Vizianagaram District executed by Raja Vyricherla Surya Narayana Raja Bahadur, who was the grand father of 1st Respondent, the executant of the document described himself as belonging to Kshatriya caste. In the decree, dated 31-03-1938 in O.S. No. 3 of 1935 on the file of the Subordinate Judge, Srikakulam filed by Raja Vyricherla Surya Narayana Raja Bahadur, who was the grand father of 1st Respondent, Plaintiffs 2 and 3 were the father and uncle of 1st Respondent and they described themselves as belonging to Kshatriya caste. In the registered document No. 1870 of 1949 and the document executed on 28-04-1950 on the file of the Sub Registrar, Parvathipuram, Vizianagaram District executed by Vyricherla Durgaprasad Virabhadra Deo Bahadur, who was the father of 1st Respondent, the executant of the document described himself as belonging to Kshatriya caste. All these documents are executed either by the grand father or father of 1st Respondent and they are public documents. In these documents both the grand father and father of 1st Respondent described themselves as Kshatriya caste. Thus it is established that family of 1st Respondent belongs to Kshatriya caste and the same is not included in any one of the Scheduled Tribes in the State of Andhra Pradesh. Under the said circumstances, the 1st Respondent is not qualified to contest the election from 18 Araku Lok Sabha (S.T.) Parliamentary Constituency. The Petitioner also made a representation to the President of India on 06-06-2006 for the same purpose. As the District Collector, Vizianagaram, did not choose to conduct enquiry against the social status of 1st Respondent, the Petitioner filed W.P. No. 27205 of 2008 in this Court seeking mandamus and this Court by order, dated 28-01-2009, issued direction to the District Collector to take final decision in the matter on or before 15-05-2009. The Petitioner also filed objections at the time of scrutiny on 30-03-2009 before the Returning Officer to 18 Araku Lok Sabha (S.T.) Parliamentary Constituency (Respondent No. 12) challenging the nomination of 1st Respondent to the said constituency since he does not belong to Scheduled Tribe. Respondent No. 12 rejected the said objection filed by the Petitioner.

5. The 1st Respondent thus played fraud on the Constitution of India and on voters of the 18 Araku Lok Sabha (S.T.) Parliamentary Constituency styling himself as a person belonging to Scheduled Tribe, knowing fully well that he is a Kshatriya and does not belong to any one of the Scheduled Tribes Community. In a case, the Supreme Court directed the concerned authorities to recover the amounts drawn by the elected candidates towards allowances and other perks from persons who make false claims regarding the social status. Thus 1st Respondent was also liable for recovery of the emoluments drawn by him for the entire tenure enjoyed by him as a member of Lok Sabha not only in the year 2009 but earlier also.

6. Article 366(25) of the Constitution of India describes who are the Scheduled Tribe. According to the said definition ''Scheduled Tribe'' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. Under Article 342(1) of the Constitution of India, 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 such tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State. In the schedule part-I relating to the State of Andhra Pradesh, under the Scheduled Castesad Scheduled Tribes Orders (Amendment) Act, 1976, the caste Kshatriya is not included. In Annexure-I to A.P. (SC,ST & B Cs) Regulation of Issue of Community Certificate Act, 1993, the list of Scheduled Tribe Community is enumerated and in the said list, the caste Kshatriya is not included. In the earlier list prepared in the year 1950 also, the caste of Kshatriya is not included in the Scheduled Tribe community. Thus the caste Kshatriya cannot be treated as Scheduled Tribe. Hence, the election petition.

7. The 1st Respondent filed counter affidavit denying the averments in the election petition. It is stated that the election Petitioner filed this election petition at the instance of political rivalries of this Respondent, who are inimically disposed against him. This Respondent belongs to Kshatriya community and does not belong to Scheduled Tribe is totally incorrect, baseless and untenable and there is no basis for the allegation and it is without cause of action and is liable to be dismissed. He did not dispute about the election held to the said constituency and he fielded as a candidate of the Indian National Congress Party. He did not dispute that he is a permanent resident of Kurupam, Kurupam Mandal, Vizianagaram District. Kshatriya denotes warrior class and it is not a caste. So also Zamindar is not caste and it is only a status. Zamindar further signifies his vocation, but not his status. Admittedly, there are only a few Zamindars throughout the State. Therefore, it differentiate himself from the other ryots from whom he collects the land revenue. So, the ancestors of the 1st Respondent being the class of persons conferred with the said status and enhanced their family prestige as a warrior. Thus, the attempt of the Petitioner trying to draw inferences from the descriptions in the documents etc do not in any way establish the fact that he does not belong to a notified Scheduled Tribe. It is true that 18 Araku Lok Sabha (S.T.) Parliamentary Constituency is reserved for Scheduled Tribes in the elections held in the year 2009. As he belongs to Scheduled Tribe community, he is lawfully entitled to contest the election from the said constituency. It is true that the Petitioner lodged a complaint before the District Collector, Vizianagaram to conduct enquiry about his social status. Pursuant to the said application and after following the procedure, the District Collector, Vizianagaram, after conducting enquiry held that he belong to ''Konda Dora'' community and by his proceedings, dated 21-04-2010, issued a notification in terms

of A.P. (SC,ST & B Cs) Regulation of Issue of Community Certificate Act, 1993. The District Collector examined the documents and rejected them. It is not known in what circumstances, the recitals in the documents were made and they do not in any way establish that he belong to Kshatriya caste. He belongs to Konda Dora community, which is one of the listed Scheduled Tribes in the State of Andhra Pradesh and as such, his election do not in any way suffer from any legal infirmities.

8. It is further stated that he is the present incumbent of Kurupam Zamindar family of Vizianagaram District, being the descendent of Vyricherla Sanyasi Dora, the founder of Kurupam Zamindari. He belonged to ''Konda Dora'' community, one of the hill tribes of the then Visakhapatnam District. The details of the said Zamindari is vividly discussed in a manual of Vizianagaram District in the Presidency of Madras compiled and edited by D.F. Carmichael, M.C.S. 1869 and in Madras District Gazette, Vizianagaram in 1907, which clearly show that the Andhra and Kurupam Zamindaries were handed over to Garaya Dora and Sanyasi Dora and that they belonged to the Konda Dora tribe. These are historical facts noted and published by the authority of the Government. He did not dispute about the Petitioner filing petition before the District Collector for conducting enquiry on the social status and filing writ petition in this Court. As regards the social status of the Respondent, it is beyond dispute that he belonged to Scheduled Tribe community and there is no basis for the Petitioner to allege that the emoluments drawn by him for the entire tenure as a member of the Lok Sabha not only in the year 2009 but also earlier is a statement without any basis, besides being false and frivolous. He did not dispute that Kshatriya caste is not included in Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and in A.P. (SC,ST & B Cs) Regulation of Issue of Community Certificate Act, 1993 and the said fact has no relevance to the case. The original and intrinsic name of the Zamindars of the Kurupam ended with ''DORA'' which was replaced by the suffix ''RAJU''. Similarly, the grand father of this Respondent was married to a woman from Talcher, Orissa, who expired at the age of 29 years. Then, her side managed the Zamindari for some time and consequently their title of ''Deo'' came to be retained by the family. A tribal has no religion and he can follow any religion he likes. Admittedly, the founder of Kurupam Zamindari is not a Kshatriya and perhaps the description of Kshatriya, which is a social status on the ruling classes of Zamindars and Kings was added to signify that they are warriors and it do not have the attributes of a caste. Perhaps in the said context and the draftsman might have described the parties to a document for the purpose of identification, since one of them happens to be a Zamindar/King. When under a document property is conveyed to a purchaser, the issue of caste does not form part of the document. Similarly, neither the prefix Vyricherla nor the suffix Raju or Deo indicate any caste or community. The decision of the Governor-in-Council clearly establishes the fact that the Zamindars of Kurupam belong to hill tribes.

9. It is further stated that social status certificates have been issued to the members of the Kurupam Zamindari family in various occasions for many decades stating that

they belong to Scheduled Tribe community. A life certificate is also issued by the Competent Authority after conducting a detailed enquiry as per the procedure laid down in 1993 Act. The M.R.O. Kurupam, in his report dated 19-08-2006 has stated that the genealogical tree clearly indicates the fact that the present Zamindars of Kurupam are the descendents of Vyricherla Sanyasi Dora, a Konda Dora of an Urya Stock, who first established this ancient chiefdom. Recently Anr. enquiry was conducted by the M.R.O. Kurupam and a report has been submitted by him as well as by the R.D.O. Parvathipuram confirming the original findings of the enquiry held in the year 1999. The tribal family has been observing the requisite rites in all of their family functions which are known as the tribal practices. They worship the village goddess and celebrate the festival. Zamindars of Kurupam are not related to the Zamindars of Chinamerangi or Salur. The documentary evidence that has been referred along with customary practices that are in vogue are in controvertible and conclusive proof of the present status. It is essential to note that all Konda Doras are not chiefs, but chiefs from among the Konda Doras were referred to as Konda Raju/Razu.

10. It is further stated that Anr. enquiry was conducted by the District Level Scrutiny Committee on 22-05-2009. In connection with this enquiry, the M.R.O. and R.D.O. Parvathipuram submitted reports to the District Level Scrutiny Committee, Vizianagaram. The District Collector and Magistrate, Vizianagaram, in his proceedings, dated 21-04-2010 confirmed the findings which reads that in exercise of the powers conferred under Sub-rule 7 of Rule 9 of A.P. (S Cs, S Ts & B Cs) issue of Community, Nativity and Date of Birth Certificates Rules, 1997 communicated vide G.O. Ms. No. 58 SW (J) Department, dated 12-05-1997 read with Section 5 (1) of A.P. (SC/ST/BC) Regulation of issue of Community Certificates Act, 16/93, Sri Vyricherla Kishore Chandra Suryanarayana Deo of Kurupam Mandal of Vizianagaram District is hereby declared as belong to Konda Dora (ST). At page 6 of Encyclopedia of Indian Tribes Series-2 titled ''Tribes of Andhra Pradesh'' edited by Padmashri S.S. Shashi, who was Director General of Publications Division in the Ministry of Information & Broadcasting, Government of India, held that then came Konda Doras and Mukha Doras into prominence. They got themselves established as tribal chiefs claiming loyalties of the tribals inhabiting their territories. Thus emerged China Merangi, Kurupam, Andhra and Pachipenta estates. The first three were the seat ruled by Konda Doras, which the last was held by Mukha Doras. They ultimately became tributaries to the Maharaja of Jeypore or Vizianagaram. The territories of these tribal estates covered by the present day Parvathipuram and Salur taluks of Srikakulam District. These territories were then almost exclusively inhabited by tribals who belonged to Jatapu, Khond, Gadaba,Manne Dora and Savara tribes. Therefore, he prays to dismiss the election petition with exemplary costs as it is frivolous, vexatious and aimed to harass this Respondent.

11. Basing on the above pleadings, the following issues are settled for trial:

1. Whether the 1st Respondent belongs to Konda Dora Tribe or not?

2. To what relief?

12. On behalf of the Petitioner, P. Ws. 1 to 3 are examined and Exs.P1 to P12 are marked. On behalf of the 1st Respondent, R. Ws. 1 and 2 are examined and Exs.R1 to R4 are marked.

13. Mr. Bojja Tarakam, learned senior counsel appearing for the Petitioner contended that 1st Respondent is a permanent resident of Fort Kurupam, Kurupam Mandal, Vizianagaram District, that he hails from a Kshatriya family, that the family is also of a Zamindar, that it is known in the entire district of Vizianagaram and also in the north coastal districts that the 1st Respondent and Vyricherla family belong to Kshatriya community and they are treated in the districts as Kshatriya community otherwise known as Rajus, that there is Anr. family by name Shatrucharla in Vizianagaram District, which also belongs to Kshatriya community, that both the families are related to each other, that Vyricherla family is also related to Poosapati family of Vizianagaram district, which also belongs to Kshatriya caste, that the 1st Respondent nor any member of his family has any marital or other social relationship with any one of the families belonging to Scheduled Tribes in either Vizianagaram District or any other agency areas in the State of Andhra Pradesh, that as the 1st Respondent does not belong to Scheduled Tribe of Vizianagaram District, he is not qualified to contest from the 18 Araku Lok Sabha (S.T.) Parliamentary Constituency, that the certified copies of registered documents Exs.P5 to P8 would clearly go to show that community of the parents of the 1st Respondent or the 1st Respondent was shown as Kshatriya, that similarly the admission register of the 1st Respondent in the school in Madras relating to the year 1963 would also show that the community of the 1st Respondent is Kshatriya, that the District Level Scrutiny Committed cancelled the caste certificate issued in favour of the 1st Respondent, that the document Ex.P3 is of the year 1901, Exs.P4 and P5 are of the year 1902 whereunder the ancestors of 1st Respondent were described as Kshatriya community and those documents have not been denied or disputed and therefore, the contents therein can be relied upon to show the community of 1st Respondent, that similarly the decree in O.S.3 of 1935 on the file of the Subordinate Judge, Srikakulam would clearly go to show that community of the 1st Respondent''s father is shown as Kshatriya, that the evidence of P.W.1 would go to show that 1st Respondent hails from Kshatriya community, that the 1st Respondent is having close marital relations with Poosapati family which is also Zamindari family, that one Vijaya Rama Raju, who is related to 1st Respondent contested for Nagoor constituency and his election was set aside by the Supreme Court, that P.W.1 filed objection before the Returning Officer stating that the 1st Respondent does not belong to Scheduled Tribe, but the same was rejected by the Returning Officer arbitrarily and without assigning any reasons, that he also filed Writ Petition before this Court to conduct an enquiry with regard to social status of the 1st Respondent,

that during the course of enquiry, the 1st Respondent himself made a statement under Ex.P12 that he belongs to Konda Raju caste, which is equivalent to Konda Dora, that on his own admission, Konda Raju is not included as one of the Scheduled Tribes in the Constitution (Scheduled Tribe) Order, 1950, that therefore, it is nothing but playing fraud on the Constitution by the 1st Respondent and hence, he prays that the election of the 1st Respondent has to be declared as void.

14. On the other hand, Mr. B. Adinarayana Rao, learned senior counsel appearing for the 1st Respondent contended that the 1st Respondent belongs to Konda Dora tribe which is recognized as Scheduled Tribe, that he previously contested in the elections held in 1977 to 1984, 1989, 1991, 1999 and 2004 as a Scheduled Tribe, that his social status was never in issue before any authority, that Kshatriya is not a community, it is a warrior class, that his ancestors were tribal chiefs and Zamindars of Kurupam, that the original founder of Kurupam belongs to Konda Dora tribe, which can be seen from the Madras District Gazette, that the tribal community are having no religion, that the registered documents filed by the Petitioner are said to have written by the Diwan which are meant for identification of individual, that therefore, the issue of caste or community as noted in the documents cannot be taken in deciding the community of 1st Respondent, that merely because the community of 1st Respondent is shown as Kshatriya in the documents Exs.P5 to P8, the same cannot be a sole basis for determining the community of a person, that the manual of Visakhapatnam shows that ancestors of 1st Respondent belongs to Konda Dora tribe and those tribes were found in the Vizianagaram District, that his paternal ancestor was one Sanyasi Dora who was a tribal chief, that the social status certificates were issued for Kurupam Zamindaries as belonging to Scheduled Tribe in various occasions, that a detailed enquiry was conducted by the competent revenue officials, which would clearly reveal that 1st Respondent belongs to Konda Dora, that he never played fraud on the constitution in obtaining social status certificate, that mere marking of the documents by the Petitioner does not amount to proving the contents therein, that the contents therein cannot be said to be conclusive proof of the facts stated therein, that the school admission register Ex.P9 is not shown to have been maintained as authorized by any statute, that burden of proving that the 1st Respondent does not belong to Konda Dora is heavily on the Petitioner, that the oral evidence of P.W.1 and the documents Exs.P3 to P9 would not conclusively prove that 1st Respondent belongs to Kshatriya community and the charge against the 1st Respondent has not been proved beyond all reasonable doubt and hence, he prays to dismiss the election petition.

15. Both the learned Counsel relied upon several decisions, which will be referred to at appropriate time.

16. ISSUE No. 1:

Under Section 80 of the Act, 1951, no election shall be called in question except by an election petition presented in accordance with the provisions as mentioned in

Chapter 2. Section 81 of the Act, 1951 provides for presentation of election petition, which reads thus:

81 Presentation of petitions:

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101 (High Court) by any candidate at such election or any elector within forty five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates).

17. Section 82 of the Act, 1951 deals with parties to the election petition, whereas Section 83 of the Act,1951 deals with contents of the election petition, which reads thus:

a) 83 Contents of petition:

b) (1) An election petition-shall contain a concise statement of the material facts on which the Petitioner relies;

c) shall set forth full particulars of any corrupt practice that the Petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings.

Provided that where the Petitioner alleges any corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the Petitioner and verified in the same manner as the petition.

18. The grounds to challenge the election of a returned candidate are prescribed in Sub-section (1) of Section 100 and 101 of the Act, 1951. Clauses (1) and (2) of Section 83 of the Act, 1951 make it mandatory on the Petitioner to furnish concise statement not only material facts necessary to constitute cause of action, but also the necessary particulars to put the returned candidate in notice of the details of the charge, he is calling upon to meet. If vague, ambiguous or bald statements are made in the election petition, they do not satisfy the requirements of the said provision.

19. As seen from the arguments advanced by the learned Counsel appearing for the Petitioner, the only ground taken to challenge the election of the 1st Respondent is u/s 100(1)(a) of the Act, 1951, which reads thus:

a) 100. Grounds for declaring election to be void:

b) (1) Subject to the provisions of Sub-section (2) , if the High Court is of opinion-that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act;

20. From the above provision, if the High Court is of the opinion that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under the Act 1951 or under the Government of Union Territories Act, 1963, it shall declare the election of the returned candidate to be void.

21. In Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, with regard to showing in the election petition the concise statement of material facts with reference to Section 83 of the Act, 1951, wherein it was held thus:

The Section is mandatory and requires first a concise statement of material facts and then requires the fully possible particulars. What is the the difference between material facts and particulars? The word ''material'' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

22. In Ram Sukh Vs. Dinesh Aggarwal, on the ground that what are the material facts with reference to the election law, wherein it was held thus (para 15):

AT this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases "material facts" as appearing in Clause (a) and "particulars" as appearing in Clause (b) of Sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the Petitioner to prove his cause of action and by the Defendant to prove his defence. "particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.

23. In Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, , wherein it was held thus (para 14):

BEFORE we consider various paras of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the

trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by catena of decisions of this Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , Jagan Nath Vs. Jaswant Singh and Others, , Jyoti Basu and Others Vs. Debi Ghosal and Others, . These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of the People Act is a complete and self contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the CPC are applicable to the extent as permissible by S. 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by S. 80 on the grounds as contained in S. 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by S. 83 and it makes it obligatory on the election Petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground u/s 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.

24. The word ''Schedule Tribe'' is defined under Article 366(25) of the Constitution of India, which means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. Article 342(1) of the Constitution of India reads that, 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 such tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to the State or Union Territory, as the case may be. The object of the above provision is to provide additional protection to the members of the Schedule Tribe having regard to the economic, social and educational backwardness from which they suffer. To specify the tribes, the President has authorized to limit the notification applicable to the certain areas and inclusion of certain tribes. Therefore, the list of Tribes or Tribal Communities is now contained in the Constitution (Schedule Tribe) Order, 1950 as amended from time to

time has to be taken as final. Once an entry is made in the presidential order in respect of a tribe after consultation with the Governor by a public notification specifying the tribes which shall be for the purposes of constitution be deemed to be a Schedule Tribe in relation to that State. Once a particular Tribe is included in the list of presidential order in pursuance of the law made by the Parliament, it is not open to any authority including Court or State Government or Central Government to make any addition or subtraction of list of tribes from the presidential order. In State of Maharashtra and Others Vs. Mana Adim Jamat Mandal, , wherein it was held thus (para 9):

IT is now well settled principle of law that no authority, other than the Parliament by law, can amend the Presidential Orders. Neither the State Governments nor the courts nor the Tribunals nor any authority can assume jurisdiction to hold inquiry 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 inquiry 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 or exclude a particular caste or tribe or group of castes or tribes when they are expressly included

In Parsram and Another Vs. Shivchand and Others, , it was held thus:

These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazeteers and the glossaries on the Punjab castes and tribes to which reference was made at the Bar to find out whether mochi and chamar in some parts of the State at least meant the same caste although there might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which mochis do not. However that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a mochi, he could still claim to belong to the scheduled caste of chamars and be allowed to contest an election on that basis

In State of Maharashtra v. Milind and Ors. AIR 2001 SC 393, it was held thus:

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 s 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 (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

25. The learned Counsel appearing for the Petitioner relied upon a decision reported in Nityanand Sharma and another Vs. State of Bihar and others, , wherein it was held thus:

IN view of the respective contentions, the question that arises for consideration is: whether the Court can give declaration of the social status as a Tribe or declare Lohars as Scheduled Tribes in the Act and the Schedule of the Act? Clause (24) of Article 366 defines "scheduled Castes" and Clause (25) of Article 366 defines "scheduled Tribes". The latter means "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution" (Emphasis supplied ). Article 341(1) empowers the President, in consultation with the Governor of the concerned State to specify Scheduled Castes by public notification. Equally, Article 342(1) empowers the President "with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification to specify the Tribes or Tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be". Article 342(2) empowers the Parliament, by law, to 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. In other words it is the constitutional

mandate that the tribes or tribals communities or parts of or groups within such tribes or tribal communities specified by the President, after consultation with the Governor in the public notification, will be Scheduled Tribes subject to the law made by the Parliament alone, which may, by law, include in or exclude from the list of Scheduled Tribes specified by the President. Thereafter, it cannot be varied except by Parliament. The specification is for the purpose of the Constitution.

26. It is not in dispute that the election Petitioner is a registered voter and elector from Ward No. 2, Booth No. 36, Sl. No. 841 of Salur Municipality, Salur Assembly Constituency, which comes under Araku Lok Sabha Parliamentary Constituency. The election to the 18 Araku Lok Sabha (S.T.) Parliamentary Constituency was held on 16-04-2009. The 1st Respondent contested on behalf of Indian National Congress Party. Respondents 2 to 11 are other contesting candidates from various parties and also as independents. The result of the said election was declared on 16-05-2009, whereunder the 1st Respondent was declared as member of Lok Sabha from the said constituency. The election Petitioner in order to succeed the petition must establish the charge leveled against the 1st Respondent beyond all reasonable doubt. In election trial, however, intriguing may be facts and circumstances of the case, the charges made against the returned candidate must be proved beyond all reasonable doubt and the requirement of proof cannot lie in the realm of surmises and conjectures. In a election trial, the degree of proof is stricker than what is required in a civil proceeding. The test beyond reasonable doubt is really the estimate, which a prudent man makes of the probabilities, having regard to what must be his duty as a result of an estimate. In each case whether the proof of the case for the election Petitioner or proof of defence set up by returned candidate, it is the estimate of probabilities arrived at from his practical stand point by a prudent man. Reasonableness of the doubt must be commensurate with the nature of the charge to be enquired during trial. On this aspect it is pertinent to refer to the decision reported in Jagdev Singh Sidhanti Vs. Pratap Singh Daulta, , wherein it was held thus:

IT may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i. e. the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail. The evidence may be examined bearing this approach to the evidence in mind.

27. According to the evidence of P.W.1, the 1st Respondent hails from Kshatriya family, that the 1st Respondent was having close marital and social relationship with Poosapati family, which is also Kshatriya family, that the 1st Respondent family in

Kurupam Mandal is not belonging to any one of the Scheduled Tribes and Exs.P3 to P5 which are the certified copies of registered documents executed by the grand father of 1st Respondent whereunder the executant described himself as Kshatriya community. He also stated that in Ex.P6-decree in O.S. No. 3 of 1935 on the file of the Subordinate Judge Court, Srikakulam, which was filed by the grand father and father of the 1st Respondent, wherein they were shown as Plaintiff Nos. 2 and 3 and that 1st Plaintiff therein was the paternal uncle of the 1st Respondent herein. All the Plaintiffs in the said suit described themselves as Kshatriyas. Similarly, in Exs.P7 and P8, which are the certified copies of registered documents executed by the father of the 1st Respondent, whereunder he described himself as Kshatriya. He also filed Ex.P9, which is school admission of 1st Respondent, whereunder the community of the 1st Respondent was shown as Kshatriya at relevant column. All these documents were marked subject to objection with regard to admissibility, relevancy and proof.

28. Learned Counsel for the Petitioner contended that these documents are of more than 30 years old and execution of those documents have not been specifically denied or disputed, the contents of documents are proof of fact stated therein. The evidence of R.W.1 shows that Diwan of Kurupam Zamindar might have described community of his grand father in the document as Kshatriya and that cannot be taken as a conclusive proof of the contents therein.

29. Learned Counsel appearing for the Petitioner relied on a decision reported in Biswambhar Singh and Others Vs. The State of Orissa and Another, , wherein it was held thus:

Further and strictly speaking the Appellant Shri Sibnarayan Singh Mahapatra having in his own letter dated the 19/07/1943 referred to above admitted the existence and contents of the Ekarnama, secondly evidence is, strictly speaking, admissible u/s 65(b) of the Indian Evidence Act. It may also be mentioned here that in the grounds of appeal set forth in the petition for leave to this Court no grievance was made that secondary evidence of the contents of the Ekrarnama had been wrongly let in. In the circumstances, this Appellant cannot now be heard to complain of admission of inadmissible evidence as to the terms of the Ekrarnama. Apart from this, the recital of the Ekrarnama and its terms in an ancient public document like the Rubakari whose authenticity has not been, nor indeed could be doubted furnishes evidence of the existence and genuineness of the settlement arrived at by the parties.

In the above decision the contents of the documents are in dispute namely with regard to the payment of fixed annual rent. No objection is taken as to the admissibility on the ground that Ekarnama is merely secondary evidence of the document. Hence, it is held that Ekarnama furnishes the evidence of existence. But in this case the contents of the certified copies of the documents are not relying upon by the Petitioner, but the Petitioner filed the certified copies of Exs.P3 to P9 for the purpose of showing the community of the 1st Respondent or his ancestors. Therefore, the above decision has no relevancy in the case of Election Petition.

30. He further relied on a decision reported in Mobarik Ali Ahmed Vs. The State of Bombay, , wherein it was held thus:

Learned Counsel objected to this approach on a question of proof. We are, however, unable to see any objection. The proof of the genuineness of a document is proof of the authorship of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Indian Evidence Act. It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship.
There is no possibility to adduce evidence with regard to execution of document by the parties thereto. An objection was taken for marking Ex.P3 and Exs.P5 to P9. There is no dispute about the ratio laid down by the apex Court with regard to proof of handwriting of the contents or the signature as by way of one of the modes prescribed under Sections 45 and 47 of the Indian Evidence Act, 1872.

31. He further relied on a decision reported in Smt. Prem Lata Vs. Arhant Kumar, , wherein it was held thus:

MR. O. P. Verma, the learned Counsel for the Appellant, contended that the trial Court as well as the appellate Court had wrongly placed the burden on the Appellant to prove that she had good grounds to leave the husband''s house and because of that erroneous approach those courts have come to a wrong conclusion. The question of burden of proof has no importance at this stage. Both parties have adduced evidence and the trial Court and the appellate Court have appreciated that evidence.

32. He further relied on a decision reported in Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, , wherein it was held thus:

The question of onus probably is certainly important in the early stages of a case. It may also assume importance where no evidence at all is led on the question in dispute by either side; in such a contingency the party on whom the Onus lies to prove a certain fact must fail. Where however evidence has been led by the contesting parties on the question in issue, abstract considerations of onus are out of place; truth or otherwise of the case must always be adjudged on the evidence

led by the parties.

The ratio laid down in the above decisions has no application to the present facts of the case especially in case of dispute challenging the election of returned candidate.

33. He further relied on a decision reported in Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , wherein it was held thus:

AGGRIEVED by the decree passed in his appeal by the District Court, the Respondent moved the High Court u/s 100 C. P. C. , and his appeal was heard by Sanjeeva Rao Nayudu J. The learned Judge emphasised the fact that no sale-deed had been produced by the Appellants to prove their title, and then examined the documentary evidence on which they relied. He was inclined to hold that Ext. A-8 have not been proved at all and could not therefore, be received in evidence. It has been fairly conceded by Mr. Sastri for the Respondent before us that this was plainly erroneous in law. The document in question being a Certified copy of a public document need not have been proved by calling a witness. Besides, no objection had been raised about the mode of proOf either in the trial Court or in the District Court. The learned Judge then examined the question as to whether the said document was genuine, and he thought that it was a doubtful document and no weight could be attached to it. A similar comment was made by him in respect of the cist receipts on which both the courts of fact had acted. In his opinion, the said documents were also not genuine and could not be accepted as reliable. He then referred to the fact that the Appellants had offered security in proceedings between the Respondent and his judgment debtor Boya Krishnappa, and held that the said conduct destroyed the Appellants'' case; and he also relied on the fact that the lease-deeds produced by the Appellants had been disbelieved and that also weakened their case. It is on these considerations that the learned Judge set aside the concurrent findings recorded by the courts below, allowed the second appeal preferred by the Respondent and directed that the Appellants'' suit should be dismissed with costs throughout. It is the validity of this decree which is challenged before us by the Appellants and the principal ground on which the challenge rests is that in reversing concurrent findings of fact recorded by the courts below, the learned Judge has clearly contravened the provisions of S. 100 of the Code.
In this case also, it is not in dispute that certified copies of the public documents are filed. An objection has been taken at the time of marking Exs.P3 to P9.

34. He further relied on a decision reported in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , wherein it was held thus:

We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession

which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.

That is a case where the attachment of immovable properties belonging to the joint family of one Nagappa as Nagappa did not pay the tax. In that context, it was held that the evidence was let in by both the parties. The abstract doctrine of onus of proof is out of place. But in Election Laws, the Election Petitioner must prove the charge as required to be proved in a criminal case.

35. He further relied on a decision reported in Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, , wherein it was held thus:

THE Plaintiffs wanted to rely on Exhibits A-12 and A-13, the day book and the ledger respectively. The Plaintiffs did not prove these books. There is no reference to these books in the judgments. The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved. The proof of the Plaintiffs'' books of account became important because the Plaintiffs'' accounts were impeached and falsified by the Defendants'' case of larger payments than those admitted by the Plaintiffs. The irresistible inference arises that the Plaintiff''s books would not have supported the Plaintiffs.

There is no dispute about the proposition of law laid down by the apex Court. Even this decision would not come to the aid of Petitioners case as mere marking of documents does not dispense with the proof of documents.

36. He further relied on a decision reported in Dattatraya Vs. Rangnath Gopalrao Kawathekar (Dead) by his legal representatives and Others, , wherein it was held thus:

What facts and circumstances have to be established to prove the execution of a document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and that the document is a forgery, party seeking to prove the execution of a document need not adduce evidence to show that the party who signed the document knew the contents of the document. Ordinarily no one is expected to sign a document without knowing its contents but if it is pleaded that the party who signed the document did not know the contents of the document then it may it certain circumstances be necessary for the party seeking to prove the document to place material before the court to satisfy it that the party who signed the document had the knowledge of its contents.

That is a case where the point arises for determination is whether the executant has signed the deed with the knowledge of its contents. When a person who signed the document pleads ignorance in certain circumstances, it may be necessary for the party seeking to prove the documents to satisfy the Court that the executant had knowledge of its contents. Therefore, the above decision may not be applicable for the purpose of deciding the issue here.

37. He further relied on a decision reported in Vijaya Kari Vs. Kondamuri Swarnalatha and Another, , wherein it was held thus:

Under the Educational Rules every school is obligated to maintain register of admissions with the prescribed particulars and such records can be considered as official records admissible under Sec 35 of the EVIDENCE ACT, 1872. Section 35 of the EVIDENCE ACT, 1872 provides that the document or record maintained pursuant to any legal obligation is an official document admissible u/s 35 of the EVIDENCE ACT, 1872. In view of the fact that the registers are maintained in every school in view of the statutory compulsion they can be considered as official records and admissible u/s 35 of the Evidence act and as such Section 35 does not forbid the admissibility of Ex. B 6 in the instant case

In view of the above decision, it is clear that a register is maintained as enjoined by Madras Educational Rules whereunder a private school is required to keep register of admissions. Therefore, such register comes within the meaning of Section 35 of the Indian Evidence Act, 1872. That is a case where with reference to the relevancy and admissibility of date of birth mentioned in the school register. Therefore, it is contended by learned Counsel for the Petitioner that Ex.P9 can be used as evidence in view of the fact that it has been proved by the Head Master of the school. To what extent the contents in Ex.P9can be taken as evidence is required to be seen with reference to the other surrounding facts and circumstances of the case.

38. He further relied on a decision reported in Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., , wherein it was held thus:

The mode of proof of documents required to be attested is contained in Sections 68 - 71 of the Evidence Act. u/s 68, if the execution of a document required to be attested is to be proved, it will be necessary to call an attesting witness, if alive and subject to the process of Court and is capable of giving evidence. But in case the document is registered then except in the case of a will it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed. This is clear from Section 68 of the Evidence Act. It reads as follows:

Section 88: If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

39. He further relied on a decision reported in Rosammal Issetheenammal Fernandez (Dead) By Lrs. and Others Vs. Joosa Mariyan Fernandez and Others, , wherein it was held thus:

THE aforesaid pleading leaves to no room of doubt about denial of execution of the said documents. The pleading records, that Defendants Nos. 1 and 2 forged the signature of the father after influencing the sub-registrar. The denial cannot be more stronger than what is recorded here. Once when there is denial made by the Plaintiff, it cannot be doubted that the proviso will not be attracted

That is a case with regard to relevancy and admissibility of copy of the deed of mortgage and with regard to proving of execution of any document which is required by law to be attested and in such a case, one attesting witness has to be called as a witness. Therefore, the above decisions have no application to the present facts of the case.

40. He further relied on a decision reported in State of Haryana Vs. Ram Singh, , wherein it was held thus:

SECTION 51A of the Act is to the same effect. In Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , it was held that by virtue of Section 51A, a certified copy of a document registered under the Registration Act, 1908 including a copy u/s 57 of the Act may be accepted as evidence of the transaction recorded in such documents. It is open to the Court to accept the certified copy as reliable evidence and without examining parties to the documents. This does not however preclude the Court from rejecting the transaction itself as being mala fide or sham provided such a challenge is laid before the Court.

The above decision has no application to the present facts of the case in view of the fact that by virtue of Section 51A of the Land Acquisition Act, the Court can accept the certified copy as a reliable evidence. Even under Evidence Act, also a certified copy of the registered sale deed is admissible in evidence in certain circumstances and does not need to be proved by calling a witness.

41. He further relied on a decision reported in Bhimappa And Ors. v. Allisab And Others AIR 2006 KAR 231, wherein it was held thus:

It has to be established by producing documents under which he is claiming title, most of the time under a registered document. Insofar as documents are concerned Section 61 of the Evidence Act mandates that the contents of documents may be proved either by primary or secondary evidence. Primary evidence means the documentary evidence produced for inspection of the Court. Therefore, when a particular fact is to be established by production of documentary evidence there is no scope for leading oral evidence and there is no scope for personal knowledge. What is to be produced is the primary evidence, i. e. , document itself

There is no dispute about the fact that when original document is filed, proving of document by examining the persons who are well versed with the document or by examining the attesting witnesses or the executant of the document does not arise.

42. Learned Counsel for the Petitioner placed strong reliance on the decision reported in Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju And Others AIR 2005 SCW 6197, wherein it was held thus:

LEARNED senior counsel for the Appellant made a strenuous attempt to contend that the learned Judge of the High Court had wrongly placed the burden of proof in the case. We cannot agree. The trial judge has rightly proceeded on the basis that the initial burden was on the election Petitioner to establish his plea that the Appellant did not belong to a Scheduled Tribe. Though in a prior statement an assertion in one''s own interest, may not be evidence, a prior statement, adverse to one''s interest would be evidence. In fact, it would be the best evidence the opposite party can rely upon. Therefore, in the present case, where the Appellant is pleading that he is a Konda dora, the statement in the series of documents, pre-constitution and post constitution, executed by his ancestors and members of his family including himself describing themselves as ''kshatriyas'', would operate as admissions against the interest of the Appellant in the present case. These admissions also strengthened the admission of the Appellant that in his school leaving certificate also, he is described as a ''kshatriya'' and his paternal uncle''s son is also described as a ''kshatriya'' in his school leaving certificate and that uncle''s son was also held to be a ''kshatriya'' on an enquiry made in that behalf. Therefore, in our view, the trial judge was correct in holding that the election Petitioner had discharged the initial burden placed on him and the burden shifted to the Appellant to establish that he belonged to the ''konda Dora'' Tribe.

43. He also relied on a decision reported in Smt. Radha Bai Ananda Rao v. S. Suvarna Cumar And Another (1980) 3 SCC 169, wherein it was held thus:

IT would thus appear that documents Ex. A 4 (c), B 8, B 5 and B 7, which were recorded during the period 2/06/192 4/09/1944, show that the elder brother of the Appellant as well as her younger lister and brother were recorded as belonging to the ''koya'' scheduled tribe in the school registers. The Appellant was a child when entries Exs. A4 (c) and B 8 were made, and she was quite a young girl when entries Exs. B 5 and B 7 were made, and she could not possibly have thought that there was any advantage in recording the tribe of her brOrs. and sister as ''koya'' during that period, which was long before the issue of the Constitution (Scheduled Tribes) Order, 1950

The documents filed by election Petitioner therein to show the community of returned candidate appear to have not denied or disputed. In that context, it is observed by Supreme Court that Exs.A2 to A11 read with Ex.A23 and oral evidence of P. Ws. 1 to 8 and Exs.C1 to C10 therein, the burden shifts to the returned

candidate to establish that he belongs to Konda Dora community. But in this case specific objection was taken with regard to marking of Exs.P3 to P9. Therefore, the contents with regard to community of ancestors of 1st Respondent in these documents cannot be read as evidence. At best the contents with regard to community of 1st Respondent mentioned therein can be used to support other evidence if any, on record.

44. He also relied on a decision reported in Punit Rai Vs. Dinesh Chaudhary, , wherein it was held thus:

THE case of the parties is clear from their pleadings and the evidence adduced by them as indicated above. The Petitioner challenged the status of Respondent Dinesh chaudhary as a Scheduled Caste person belonging to the S. C. community. Precisely what was indicated in support of that case is that father of Dinesh Chaudhary and Naresh chaudhary is Bhagwan Singh who is Kurmi by caste married to Jago Devi, also a Kurmi lady. The High Court has also observed that a person borne in a Kurmi family normally would be presumed that he is Kurmi by caste. In this background the initial burden of the Petitioner would stand discharged and it would shift upon the Respondent to prove his case which, in normal course of things, would be and is within his special knowledge. A case which has been set up by the Respondent through his witnesses as well that his father had taken a fancy for deo Kumari Devi, a resident of village Adai, who is Pasi by caste and married her who gave birth to two children including the Respondent, would normally be not in the knowledge of people in general particularly when according to the case of the Respondent himself Jago Devi lived in Anr. village and she was never brought from there by Bhagwan Singh. More so, when Bhagwan Singh, a Kurmi by caste, is living with his wife Jago Devi, also a Kurmi, in their village Jahanabad. The best evidence, as also according to the High Court to prove the case of the Respondent was, to produce bhagwan Singh and Deo Kumari Devi but they have been withheld after being cited as witnesses for the Respondent. These facts clearly make out a case for drawing an adverse inference that in case they had been produced they would not have supported the case of the Respondent. AIR 1961 SC 1316 Kundan Lal rallaram v. Custodian, Evacuee Property, Bombay AIR 1917 PC 6 T. S. Murugesam pillai v. M. D. Gnana Sambandha Panrdara sannadhi and Ors. and Thiru John Vs. The Returning Officer and Others, Thiru John and Anr. v. The Returning officer and Ors. may also be referred on the point.

45. He also relied on a decision reported in R. Palanimuthu Vs. Returning Officer and Others, , wherein it was held thus:

THE above documents show that the second Respondent and his father Venkata Reddy and grandfather Perumal Reddy belong to the Hindu Reddiar community. The Appellant gave notice under Order 12 R. 5 of the Code of CPC to the second Respondent for admitting certain facts. One of the facts he was required to admit is that Hindu Reddiar community is not a Scheduled Tribe community. The second

Respondent had admitted that the Hindu Reddiar community is not a Scheduled Tribe community and stated that he had obtained the certificate dated 25-10-1977 from Tahsildar of Thuraiyur taluk to the effect that he belongs to the Konda Reddy community, and that he had applied on an earlier date for the grant of that certificate in order to enable him to apply for a job. Faced with the aforesaid documents which clearly show that the second Respondent and the members of his family belong to the Hindu Reddiar community which is admittedly not a Scheduled Tribe community the second Respondent has sought to get over the difficulty by saying that Konda Reddy community is a sub-caste of the Hindu Reddiar community. This explanation cannot be accepted having regard to the facts and circumstances of the case.

46. The decision relied on by the learned Counsel for the Petitioner reported in Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, has no application to the present facts of the case vis-�-vis certain guidelines are issued for issuance of social status certificates, their scrutiny and their approval.

47. On the other hand, learned Counsel appearing for the 1st Respondent relied on a decision reported in Harikrishna Lal Vs. Babu Lal Marandi, , wherein it was held thus:

The success of a winning candidate is not to be lightly interfered with. The burden of proof lies on the one who challenges the election to raise necessary pleadings and adduce evidence to prove such averments as would enable the result of the election being set aside on any of the grounds available in the law. In an election petition if nobody adduces evidence it is the election Petitioner who fails.

That is a case where the election of Jharkand Legislative Assembly from 23, Ramgarh Assembly Constituency was under challenge. In that context, it was held that the burden of proof lies on the election Petitioner to raise necessary pleadings and adduce evidence.

48. He further relied on a decision reported in P.C. Purushothama Reddiar Vs. S. Perumal, , wherein it was held thus:

BEFORE leaving this case is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the Respondent. He contended that the Police reports referred to earlier are inadmissible in evidence as the Head Constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the Respondent now to object to their admissibility - see Bhagat Ram v. Khetu Ram AIR 1929 PC 110.

IT was next urged that even if the reports in question are admissible we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in

evidence though those contents may not be conclusive evidence.

That is a case where the police reports are marked without any objection before the High Court in a Election Petition. In that context, it was held that when the document is properly admitted, the contents of the documents are also admitted in evidence, but they are not conclusive evidence.

49. He further relied on a decision reported in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, , wherein it was held thus:

Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i. e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue

From the above decision, it is clear that the contents of the document are to be proved by admissible evidence.

50. He further relied on a decision reported in Madholal Sindhu Vs. Asian Assurance Co. Ltd. and Others, wherein it was held thus:

This proposition sounded to me a novel one. I had in fact never heard any such argument before. Section 67, Evidence Act only permitted the proof of the signature or handwriting of the person signing or writing the document to be given and considered it to be sufficient in those cases where the issue between the parties was whether a document was signed or written wholly or in part by that person. It did not go so far as to say that even if it was proved that the signature or the handwriting of so much of the document as was alleged to be in the handwriting of the person, was in his handwriting, it would go to prove the contents of that document. No doubt the proof in so far as it was sought to be given in the evidence of Balkrishna Bhagwan Dekshmukh of the signature or handwriting of the said various documents could have established that those documents were signed or written in the handwriting of Deshpande, Paranjape or Jamnadas, but the matter could rest there and would carry the Plaintiff no other.

It certainly could not prove that the contents of those various documents which were thus proved to have been signed or written by Deshpande, Paranjape or Jamnadas were correct, and unless the Plaintiff succeeded in proving the correctness of the contents of those various documents, he would not advance any step towards proving his case. Mr. Taraporewalla for the bank an Jamnadas supported Mr. Somjee in his submission. He submitted that once the signatures were proved the letters as a whole were roved, through the Court might say that the contents thereof were not proved in the sense that they were true. He submitted

that the Court could admit those documents in evidence with that reservation, a reservation which to my mind went to the root of the whole matter and deprived the documents of all value whatsoever even if they might be admitted by the Court in evidence.

51. He further relied on a decision reported in Rangayyan And Anr. v. Innasimuthu Mudali And Others AIR 1956 MAD 226, wherein it was held thus:

The words of Section 11 are very wide, and it may be safely laid down that all evidence which would be held to be admissible by English law would be properly admitted under this section of the Act. Collateral facts which, by way of contradiction, are inconsistent with a fact in issue or Anr. relevant fact i.e., which makes the existence of a fact in issue or a relevant fact impossible or highly improbable, or which, by way of corroboration are consistent with existence of a fact in issue or a relevant fact i.e., tend to render the existence of a fact in issue or a relevant fact highly probable are themselves made relevant by the present section.

That is a case with regard to recitals of the boundaries in a document between the parties, which is a joint statement made by the parties to the documents. It is relevant against all of them. Such an admission is against the stranger, which is not admissible.

52. He further relied on a decision reported in Nagubai Ammal and Others Vs. B. Shama Rao and Others, , wherein it was held thus:

AN admission is not conclusive as to the truth of the matter stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

That is a decision with regard to admission made by a party. When it is clear and unambiguous, the presumption is it is correct. But such an admission is not conclusive as to the truth of the matters.

53. He further relied on a decision reported in Mahant Shri Srinivasa Ramanuj Das Vs. Surajnarayan Dass and Another, , wherein it was held thus:

IT is urged for the Appellant that what is stated in the Gazetteer cannot be treated as evidence. These statements in the Gazetteer are not relied on as evidence of title but as providing historical material and the practice followed by the Math and its head. The Gazetteer can be consulted on matters of public history.

54. He further relied on a decision reported in Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State, , wherein it was held thus:

We find no force in the contention. It is seen that the Gazette of the Bombay Presidency, Vol. III published in 1879 is admissible u/s 35 read with S. 81 of the

Evidence Act, 1872. The Gazette is admissible being official record evidencing public affairs and the Court may presume their contents as genuine. The statement contained therein can be taken into account to discover the historical material contained therein and the facts stated therein is evidence u/s 45 and the Court may in conjunction with other evidence and circumstances take into consideration in adjudging the dispute in question, though may not be treated as conclusive evidence.

The above decisions have no application because the Gazette cannot be relied upon as evidence of title, but only to prove the historical practice followed. If the Gazette comes within the meaning of Section 35 of the Evidence Act, it can be presumed that the contents therein are genuine. Hence, it is not applicable to the present facts of the case.

55. He further relied on a decision reported in Vedantham Satyavathi v. P. Venkataratnam 1988 (1) ALT 915, wherein it was held thus:

"The Evidence Act lays down the rules for proving a document. The proof of a document consist of two parts. Its genuineness and the contents of the document. So far as the genuineness is concerned, it is dealt in Sections 67 - 73 of the Act. So far as the contents are concerned, the rules are embodied in Section 61 - 66. If the document is sought to be proved the signature and also the handwriting must be proved. That is the rule laid down in Section 67. There are other modes of proving the signature either by expert evidence as provided in Section 45 or by producing the evidence of a person who is acquainted with the signature as envisaged by Section 47. Sometimes the internal evidence also may furnish proof of genuineness of the document as laid by the Supreme Court in Mubarik Ali Ahmed v. State of Bombay (2 supra). The first rule of proving the contents of document is producing the document itself. Its contents can be proved either producing the document itself which is the primary evidence or by secondary evidence as contemplated under Sections 62 - 66. This is the mode of proving the contents of the document and genuineness of the document."

From the above decision, it is clear that the contents and genuineness of the documents may be proved in accordance with provisions of Sections 62 - 66 of the Evidence Act. Even the parties to the document or writer has not examined, it cannot be said to be inadmissible in evidence. It may be relevant, but its probative value is very weak.

56. He further relied on a decision reported in Om Prakash Berlia and Another Vs. Unit Trust of India and Others, , wherein it was held thus:

"Secondly, Sections 61 and 62 read together show that the contents of a document must, primarily be proved by the production of the document itself for the inspection of the Court. It is obvious that the truth of the contents of the document, even prima facie, cannot be proved by merely producing the document for the

inspection of the Court. What it states can be so established."

The above decision also shows that the contents of the document may be proved either by primary or secondary evidence. The expression to Section 61 of the Evidence Act means what the document states, but not the truth of what the document states.

57. He further relied on a decision reported in M. Chandra v. M. Thangamuthyu And Another (2010) 9 SCC 712, wherein it was held thus:

"We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in Anr. form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party."

There is no dispute about the proposition of law laid down by the apex Court. When the documents are not in possession of the parties, the certified copies of the documents can be admitted in evidence in exceptional cases, but only thing is that it is the true copy of the original.

58. u/s 90 of the Indian Evidence Act, 1872, where any document purporting or proved to be 30 years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person''s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. If a document produced is copy admissible secondary evidence u/s 65 of the Evidence Act and is produced from proper custody and is that 30 years old, then only the signatures authenticating the copy may be presumed to be genuine. The production of the copy is not sufficient to raise the presumption of due execution of the original. From the above provision, it is clear that presumption can only be drawn with regard to attestation and execution of the document, but not to the contents of the documents.

59. For application of Section 90 of the Evidence Act, there are two pre-requisites viz., firstly that the document is 30 years old and secondly, the same is produced from proper custody. If these two conditions are fulfilled, then the Court is required to raise a presumption whether it is a fit case or not. If the Court finds that it is a fit case for exercising jurisdiction discretion and raises a presumption, in that event only, the presumption of due execution or attestation can be raised and thereafter,

necessity of formal proof that document is waived. Therefore, the contents of the document has to be proved may be either primarily or secondary evidence. Since the documents Exs.P3 and P4 are more than 100 years old, Exs.P6 and P7 are more than 60 years old and Ex.P9 is more than 50 years old, the contents are required to be proved u/s 65 of the Evidence Act. Section 57 of the Registration Act, 1908,shows that when secondary evidence has in any way been introduced, a copy certified by Registrar shall be admissible for proving the contents of the original without other proof than the certificate of the contents of the copy. But the copy does not thereby become eligible to be given in Evidence without other evidence to introduce it. As such, certified copy may be produced in proof of the contents of the original document or part of the original documents of which they purport to be copies. Documents in question being the certified copies of public documents need not have been proved by calling a witness and practically, it is not possible to call the parties to the documents or witnesses or attestors of the documents of more than 100 years old. u/s 65 of the Evidence Act, secondary evidence may be given of the existence condition or contents of a document in respect of inter alia states that when the original is a public document within the meaning of Section 74, certified copy of the document, but no other kind of secondary evidence is admissible. Therefore, a certified copy of the registered deed may be admissible u/s 65(e) of the Evidence Act as secondary evidence, but that does not dispense with the proof of the contents of the document. The copy of the public document does not become eligible to be given in evidence without other evidence to introduce it. Where the sale deeds which were primary evidence of interest sold, that were said to be registered documents and the certified copies thereof could be adduced as secondary evidence. The recitals in the documents with regard to the community or caste of a person who sold the property and who purchased the property are not required to be noted in the sale deeds. Even the community of a person is noted in the documents, it is of fragile value.

60. According to both the counsel, the community of the parties to the sale transaction is noted for the purpose of identification of person. Therefore, the main purpose of sale transaction, is a transfer of ownership in exchange for the part paid or promised or part paid and part promised. Therefore, the purport of obtaining a registered sale deed in purchasing the immovable property where the value is more than Rs. 100/- by way of registered instrument is only for the purpose of transfer of right, title and interest in respect of a immovable property. The essential elements of the sale are 1) parties 2) subject matter, which must be transferable immovable property 3) actual transfer or conveyance and not a mere promise or contract for sale 4) price or consideration and 5) registration of the instrument where value of tangible immovable sold is Rs. 100/- or upwards. Such is the case, there is no need or necessity to mention the caste or community of a person in the sale deed. Even assuming for a moment that caste or community is mentioned in the sale deed, it does not necessarily lead to draw an irresistible conclusion that the party to the

document belongs to the particular community as described in the document. Therefore, the recitals in the sale deeds cannot be taken as a conclusive proof of the evidence of the fact that a particular person named in sale deed belongs to a particular caste or community. At best, in the opinion of this Court, it can be taken as one circumstance so as to support the other acceptable evidence, if any, available on record. Therefore, the probative value of the factum of community as mentioned in the sale deeds is very weak piece of evidence.

61. Similarly with regard to Ex.P6, which is the certified copy of the decree in O.S. No. 25 of 1938 on the file of the Subordinate Judge, Chicacole, whereunder the community of the grand father of the 1st Respondent in the decree is shown as Kshatriya. Order VII Rule 1 Code of CPC reads that plaint shall contain particulars inter alia name, description of place and residence of the Plaintiff. Therefore, the term ''description'' includes the name of the Plaintiff, his age, father''s name and the place of residence etc., So O.VII Rule 1 Code of CPC does not contemplate to furnish the caste or community of Plaintiff. By merely mentioning the community in the plaint, the name of the grand father of the 1st Respondent was shown as Kshatriya, which was incorporated in the decree is not by itself proof regarding the community of a person. In my considered opinion, the caste or community as mentioned in the plaint cannot be read as conclusive evidence so as to identify the caste or community of a person.

62. The document Ex.P9 is the admission register whereunder the community of the 1st Respondent was shown as Kshatriya. To prove this document, P.W.3, the present Head Master and CorRespondent of Madras Christian College and Higher Education was summoned. According to him, Ex.P9 is the copy of extract from the admission register pertaining to the year 1957, which was issued in respect of V. Kishore Chandra Surya Narayana Dev son of V. Durga Prasad Veerabhandra Dev. The serial number 183 in the admission register is noted in the name of 1st Respondent. He brought the original admission register where in the caste of the 1st Respondent is noted as Kshatriya. He admitted that each of the entries of the admission register has not been attested by any one. There is a statutory requirement for maintenance of the school records and this admission register of the years 1947 to 1963 does not contain the attestation of either Head Master or any officials of Education Department and the admission register is being maintained for the purpose of school records. He was not aware of the authenticity of the community of the 1st Respondent as mentioned in the original of Ex.P9.

63. Learned Counsel for the Petitioner relied on a decision reported in Umesh Chandra Vs. State of Rajasthan, , wherein it was held thus:

A perusal of the provisions of Section 35 would clearly reveal that there is no legal requirement, that the public or other official book should be kept only by a public officer but all that is required is that it should be regularly kept in discharge of her official duty. This fact has been clearly proved by two independent witnesses, viz. ,

DW 1, Ratilal Mehta and DW 3. Sister Stella. The question does not present any difficulty or complexity as in our opinion the section which would assist in this behalf is S. 35 of the Evidence Act which provides for relevancy of entry in the public record

The above decision is cited for the purpose of relying upon the contents of Ex.P9, but in this case Ex.P9 is maintained not by public authority or public official in the course of regular official duty. Therefore, the above decision has no application to the present facts of the case.

64. He also relied on a decision reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , wherein it was held thus:

"THE entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would therefore, depict the caste status of the people inclusive of the school or college records, as they then census rules insisted upon. Undoubtedly, Hindu social order is based on hierarchy and caste is one of the predominant factors during pre-constitution period. Unfortunately instead of dissipating its incursion it is being needlessly accentuated, perpetrated and stratification is given legitimacy for selfish ends instead of being discouraged and put an end by all measures, including administrative and legislative. Be it as it may, people are identified by their castes for one or the other is a reality. Therefore, it is no wonder that caste is reflected in relevant entries in the public records or school or college admission register at the relevant time and the certificates are issued on its basis. The father of the Appellants admittedly described himself in 1943 and thereafter as a Hindu Koli. In other words his status was declared a Koli by caste and Hindu by religion. Kolis are admittedly OB Cs. His feigned ignorance of the ancestry is too hard to believe. The averment in the affidavit that the entries were mistakenly made as Hindu Koli is an obvious afterthought. The anthropological moorings and ethnological kinship affirmity gets genetically ingrained in the blood and no one would shake off from past, in particular, when one is conscious of the need of preserving its relevance to seek the status of Scheduled Tribe or Scheduled Caste recognized by the Constitution for their upliftment in the Society. The ingrained Tribal traits peculiar to each Tribe and anthropological features all the more become relevant when the social status is in acute controversy and needs a decision. The correct projectives furnished in pro forma and the material would lend credence and give an assurance to properly consider the claims of the social status and the concerned officer or authority would get an opportunity to test the claim for social status of particular cast or tribe or tribal community or group or part of such caste, tribe or tribal community. It or he would reach a satisfactory conclusion on the claimed social status. The father of the Appellant has failed to satisfy the crucial affinity test which is relevant and germane one. On the other hand the entries in his school and college registers as Hindu Koli positively belies the claim of his social status as Scheduled Tribe."

65. He also relied on a decision reported in Desh Raj Vs. Bodh Raj, , wherein it was held thus:

In so far as the caste certificate Ex. RW-5/a issued by the executive Magistrate, Indora, relied on by Respondent, it has to be observed that such caste certificates are not given after a thorough investigation. When the caste of Respondent is in issue and when primary evidence regarding caste is led by Appellant, and the attempt of Respondent to claim to be a ''lohar'' from 1990 is evident, the caste certificate issued by the executive Magistrate on 1. 12. 1991 cannot be taken as evidence to prove the caste of the Respondent. The decision of this Court in R. Palanimuthu Vs. Returning Officer and Others, , supports this position. In Madhuri patil (supra), this Court observed that when the school records show a particular caste, the caste certificates issued to the candidates and his relatives by the Executive Magistrate showing a different caste should be ignored. Reference was also made to the caste certificate of two relatives. But they are also of the period subsequent to 1990 when Respondent started showing that he belonged to Lohar caste. They have to be ignored as observed by this Court in Madhuri Patil (supra ).

66. Section 35 of the Evidence Act deals with relevancy of entry in public records made in performance of duty. It consists of two parts. First part is not relevant because entry is not made by the public servant in discharge of his official duty. Second part deals with any other person in performance of duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact. If the Education rules provides that Government or private school is obligated to maintain register of maintenance with the prescribed particulars, such entries can be relevant. Since original of Ex.P9 does not contain the attestation of the Head Master of the institution or any other officials of the Education department vouchsafing the correctness of the entry at the end of each academic year, it cannot be taken as a admission of proof of contents therein. Furthermore, no provision under Education Act was brought to the notice of this Court, which is prevailing in the year 1957 that the Head Master and CorRespondent of Madras Christian college has to make necessary entries in the book or registers maintained by them. This aspect of the case can be seen from Ex.R5, which is the Secondary School Certificate of 1st Respondent issued by the same school and it does not show about the community of 1st Respondent. In view of the above discussion, it can safely be concluded that the community of the 1st Respondent noted as Kshatriya in Ex.P9 cannot be taken as a conclusive proof that he belongs to Kshatriya community. In the considered opinion of this Court, at best, the recitals in those documents with reference to the community of the 1st Respondent can be taken to lend assurance to other evidence, if any, on record. The entries in the documents with regard to the community do not by themselves prove the community of the 1st Respondent. The probative value of those entries is very weak piece of evidence.

67. The oral evidence adduced by the Petitioner is that the 1st Respondent belong to Kshatriya community and he is having relationship with other Zamindari families of Vyricherla and Poosapati in Vizianagaram district and he was having close marital relationship with those Zamindari families. Merely because, the 1st Respondent or his family members were having relationship with family of Vyricherla and Poosapati, it does not mean he belong to Kshatriya community. To the knowledge of P.W.1, there is no relationship of any member of the family of the 1st Respondent with any family belong to Scheduled Tribes in Vizianagaram District. Inter caste marriages are prevailing in these days and on the ground that some of the family members of the 1st Respondent did not marry the members of the Scheduled Tribes, that cannot be a ground to arrive at a conclusion that he does not belong to Scheduled Tribe. Vizianagaram is predominantly having tribal population. According to P.W.1, the family of 1st Respondent is only solitary and single family in Kurupam Mandal not belonging to any one of the Scheduled Tribes. It is not in dispute that the 1st Respondent contested erstwhile Parvathipuram Parliamentary constituency two or three times, which is reserved for Scheduled Tribe. He also admitted that the brother of 1st Respondent by name Pradeep Chandra Dev contested from the same constituency. He does not know who was the founder of Kurupam Zamindar. He stated that Kurupam Zamindar is not located in tribal area. According to P.W.1, Kshatriya or Raju is a caste. Only Kshatriyas are called as Rajus. He admitted that Bobbili Zamindars are not Kshatriyas. They are being called as Velama Doras. He admitted that when he made an application questioning the social status of the 1st Respondent and requested to cancel the caste certificate given to the 1st Respondent before the District Collector, the District Collector conducted enquiry and confirmed that 1st Respondent belong to Scheduled Tribe community. According to him, the appeal is pending before the Government of Andhra Pradesh.

68. It is the case of the 1st Respondent that right from the beginning, Kurupam is a tribal Zamindari. Though P.W.1 was a practicing Advocate, he did not raise any dispute when 1st Respondent contested the elections for about five or six times. On earlier occasion, he has not filed any election petitions questioning the election of the 1st Respondent. He admitted that Konda Doras live in both tribal and plain areas. His objection petition Ex.P1 in respect of present election was rejected by the returning officer.

69. To support his evidence, P.W.2 was examined, who is a resident of Adduru Valasa, Parvathipuram Mandal. According to him, 1st Respondent belong to Raju community. He does not know which Zamindar belong to which community. According to him, he does not know the caste of the 1st Respondent. He does not know whether 1st Respondent belongs to Konda Dora community. Therefore, his evidence is not much helpful to the case of the Petitioner because he has not firmly stated that he does not know the community of Zamindars of Kurupam. There is no pleading and evidence in this case to show that the practices of worshipping goddesses, rituals in the Konda Dora community followed the 1st Respondent

different and distinct from that of Konda Doras. There is no evidence that tribal customs of Konda Doras are different from the practices of the family of 1st Respondent. P.W.1 did not say that the customs and practices prevailing in Kshatriyas were being followed by 1st Respondent or his family members. At one time P.W.1 says that he personally knows the tribal customs and traditions. Another time he speaks that there are no conventions and customs in Konda Dora community. He did not speak about the customs and traditions or Konda Dora people. The tribal elders of Konda Dora community have not been examined to show that the customs prevailing in Konda Dora community. Similarly elders of Kshatriya community are not examined to show about the customs in the Kshatriya community. No doubt R.W.1 admitted that he does not have any relationship with any tribes in any one of the Districts in Andhra Pradesh, but at the same time, he does not have any relationship with Kshatriyas in the District. The fact that 1st Respondent does not have any relationship with Konda Doras of Kurupam is a neutral factor. Hence, this circumstance cannot be used to lend assurance to the other evidence adduced by the election Petitioner.

70. According to R.W.1, the founder of Kurupam Zamindar is Sanyasi Dora, who belongs to Konda Dora tribe. The said statement has not been specifically denied or disputed in the cross-examination. Ex.R1 is the manual of the District of Visakhapatnam in the Presidency of Madras, which was compiled and edited by Collector, Magistrate and agent to the Governor, wherein it is stated that the founder Garaya Dora who belonged to Konda Dora community was appointed to the charge of Andhra Taluk by Visvambhara Deo of Jeypore with the title of Pratapa Rao and these Doras afterwards allied themselves to the Vizianagaram family. Kurupam Zamindar was granted to Sanyasi Dora. Ex.R4, which is the book written by Sri Padmasree S.S. Shashi with regard to the tribes of Andhra Pradesh, would go to show that the tribal estates of Kurupam, Chinamerangi and Andhra and Pachipenta in Srikakulam district patronized Telugu and Oriya scholars. He also filed Ex.R5, which is the Secondary School leaving certificate issued by the Government of Madras. It does not contain any community, but he was shown as Indian Hinduism. The evidence of R.W.1 would go to show that he belong to Konda Dora tribe and he worship deities viz., Pydimaremma, Ammatalli and Malathamma etc., and he does not have any relationship with any tribes in Vizianagaram district and his social status certificate was not cancelled by any authority. The evidence of R.W.1 that the social status certificates issued to the members of Kurupam Zamindar family in various occasions for many decades recognizing them as belonging to Scheduled Tribes has not been denied or disputed specifically. Concerned authorities issued community certificates in his favour and in favour of his family members strictly in accordance with the provisions of the A.P. (SC, ST and BC) Regulation of issue of Community Certificate Act, 1993 and that manual published by the then Collector and Magistrate shows that Andra and Kurupam Zamindars were handed over to Garayya Dora and Sanyasi Dora and they belonged to Konda Dora tribe which are

found in Visakhapatnam as hill cultivators. He also speaks about various religious worships to be performed by Konda Doras. Since a long time, the family of the 1st Respondent are being recognized as Konda Doras, which is a tribe listed in the Constitution (S.T.) Order, 1950.

71. P.W.1 is not aware of founder of Kurupam Zamindari. It is not in dispute that the 1st Respondent is from Kurupam Zamindari family. He does not know whether the genealogical tree filed by the 1st Respondent in this Court is true or not. According to R.W.1, his ancestors were tribal chiefs and Zamindars of Kurupam and the Kurupam Zamindari is founded by one Sanyasi Dora, who belonged to Konda Dora tribe. Exs.R1 and R2 would go to show that Kurupam Zamindari was founded by Sanyasi Dora. His evidence further would go to show that originally the names of Kurupam Zamindari ended with ''Dora'', but over a period of time, the same was replaced with suffix ''Raju'', which means king. His grand father died at early age. On his death, Kurupam Zamindari was managed by grand mother who hails from Orissa. Therefore, their title Deo was added to name of successors. According to him, Ex.R3 would go to show that Andhra and Kurupam Zamindari were handed over to Garayya Dora and Sanyasi Dora who belong to Konda Dora tribe and that Ex.R4 shows that Konda Dora is a caste of hill cultivators found chiefly in Visakhapatnam. R.W.1 also stated about the worship Isthadevi and they perform Sakthi Pooja and during tribal festivals, they offer the blood of Goat and Catfish as ''Nivedyam''. Every year Dasara Festival will be celebrated at Viswanadhapuram, which is their ancestral place and after thorough enquiry, social status certificate was issued by the Revenue Officials. He admits that he does not have any relationship in Vizianagaram or in any other districts. He also admitted that in Exs.P3 to P5, the community of Vyricherla is written as Kshatriya and in Ex.P6 his paternal grand father''s junior brother and his late father community was shown as Kshatriya. It is possible that in Exs.P7 and P8 his community was described as Kshatriya. He also stated that in Ex.P9 in column of caste, it is mentioned as Kshatriya and he also admitted that Ex.P9, relevant entry at Sl. No. 183 relates to him. He also admitted that in Ex.P10, his community is mentioned as Kshatriya. The suggestions put to him that by using his economic social status and by using political influence, he obtained false certificate to contest the election and he does not belong to Scheduled Tribe, were denied by R.W.1.

72. The evidence of R.W.1 that his ancestors were the tribal chiefs and Zamindars of Kurupam, that Kurupam Zamindari was founded by Sanyasi Dora, who belongs to Konda Dora tribe and the name of Kurupam Zamindari ended with Dora and replaced with suffix Raju and that his family worship Goddess Isthadevi by performing Pooja and offering Nivedyam and they worship the tribal diety remained unchallenged. Once a fact is testified by a witness, and the same is not challenged in the cross-examination of such witness, it can be safely be said that such a fact is admitted. Similarly, social status certificate issued in favour of the 1st Respondent was never cancelled by any authority. Therefore, the oral evidence of P.W.1 that

there is no tribal Zamindari in Kurupam cannot be accepted in view of Exs.R1 and R2. He was not aware of traditions and customs being followed in the family of 1st Respondent. It is not his case that he visited Kurupam Zamindari several times and that R.W.1 was not following the tribal traditions and customs. Admittedly, P.W.1 is a resident of Salur and he has not produced any material to show that Kurupam is not a tribal Zamindari. When P.W.1 does not belong to Kurupam and he is resident of Salur, his evidence is not much helpful for the purpose of deciding whether the 1st Respondent is Scheduled Tribe or not. The remaining witness examined on behalf of the Petitioner categorically stated that he does not know the community of the 1st Respondent. P.W.2 had no relations at Kurupam, which is at a distance of 30 K. Ms from his village. Therefore, when he does not know about the community of the 1st Respondent, his evidence is not relevant to the fact in issue.

73. If the oral evidence of Petitioner is eschewed from consideration, then the entire case of the Petitioner rests upon the recitals mentioned in Exs.P3 to P9 whereunder the community of the 1st Respondent or his ancestors has been mentioned as Kshatriya. Both the counsel admitted that the community of the person is to be noted in those documents for the identification purpose. Though R.W.1 is not seriously disputing about these documents, but the contention of the learned Counsel appearing for the 1st Respondent is that those do not conclusively prove the social status of a person. All these documents are certified copies, which are not denied, but they were marked subject to objection. The contents therein even it can be taken as true and correct, but they do not by themselves prove beyond reasonable doubt that the 1st Respondent belongs to Kshatriya community. At best, it give rise to a suspicion that 1st Respondent belongs to Kshatriya. But, suspicion however, strong cannot take the place of legal proof. Merely mentioning the caste or community of a person in all the documents though 100 years old, it does not lead to an irresistible conclusion that particular person belongs to a community as mentioned in the document especially when there is a doubt with regard to the community of the person. Furthermore, proper explanation is given by R.W.1 that tribal Zamindari was being managed by Diwan, who controlled the day-to-day activities, might have treated the Zamindar as ''Kshatriya''. This can be accepted considering the fact that the original ancestor of 1st Respondent was a tribal chief. The ancestors of the persons hail from tribal Zamindars and ancestors of 1st Respondent were recognized as Konda Doras. It is not in dispute that Konda Dora is included in the list of Constitution (S.T.) Order, 1950. Over the course of period after Konda Doras are called as Kshatriya or Rajus who are living in the tribal areas, it cannot be said that 1st Respondent does not belongs to Konda Dora community. The evidence of R.W.1 is very clear that the founder of Kurupam Zamindari Sanyasi Dora belongs to Konda Dora tribe. Such is the case, R.W.1 hails from Kurupam Zamindari can safely be said that he belongs to Konda Dora tribe.

74. It is one of the contentions raised by the learned Counsel appearing for the 1st Respondent that in Ex.P12 which is the statement given by R.W.1 before the Enquiry

Officer, he stated that Konda Raju tribe of the same branch of Kurupam Zamindari. So as per the admission made by R.W.1 in Ex.P12, it can be said that he belongs to Konda Raju, which is not included as one of the tribes in the Constitution (S.T.) Order, 1950. But the entire statement has to be read together for the purpose of deciding whether he belongs to Konda Dora or Konda Raju, for which R.W.1 has given an explanation that the name of tribal Zamindari ended with ''Dora'', but later it was replaced with suffix ''Raju'' and later it was suffixed as ''Deo''. Over a period of time, if the suffix is changed from one name to Anr. , the community of a person would not be changed. The suffix ''Raju'' has been replaced as ''Deo'' because his father died at early age and his mother who hails from Deo family took over Kurupam Zamindari. Therefore, Ex.P12 cannot be said to be conclusive proof that 1st Respondent belongs to Konda Raju community. Therefore, the evidence adduced on behalf of the Petitioner does not establish beyond all reasonable doubt that the 1st Respondent does not belong to Scheduled Tribe. Therefore, the Petitioner failed to establish the case beyond all reasonable doubt. Hence, this issue is answered against the Petitioner.

75. ISSUE No. 2: In view of the foregoing discussion, the election petition is liable to be dismissed and accordingly, it is dismissed with quantified costs of Rs. 5,000/-.