Milind Katware alongwith intervenors Vs State of Maharashtra alongwith intervenors

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Sept. 4, 1985

Acts Referred: Constitution of India, 1950 â€" Article 14, 341, 342

Citation: (1986) 1 BomCR 403

Hon'ble Judges: V.A. Mohta, J; B.G. Deo, J

Bench: Division Bench

Advocate: C.G. Madkholkar, Usha Purohit and P.C. Madholkar, for the Appellant; P.G. Palshikar, J.P. Pendsey and V.R. Manohar, for the Respondent

Final Decision: Allowed

Judgement

V.A. Mohta J.

1. A section of our people suffers for generations from social, educational, cultural and economical deprivations. Hence our Constitutions makes

provides of much needed protective discrimination in their favour with the ultimate object of achieving real equality. This inevitably led to the

problem of their identification. Major section of this class has been specified in the Constitution as ""Scheduled Castes"" and ""Scheduled Tribes

Constitution does not define these terms but the president was empowered under Articles 341 and 342 of the Constitution to draw up their lists on

consultation with the Governor of the State. The President did prepare two lists by the Constitution (Scheduled Caste) Order 1950 (S.C. Order)

and the Constitution (Schedules Tribes) 1950 ("ST Order). By virtue of authority conferred by these very Articles, the Parliament amended the

lists by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 ("The Act""). In this and other concerned cases, we are

concerned with the Scheduled Tribes ""Halba/Halbi at entry No 19, para IX, Second Schedule of the Act. In the S.T. Order, Halbas from the

following areas only were covered :

(1) Melghat tahsil of Amravati district.

(2) Gadachiroli and Sironcha tahsils of Chandrapur district.

(3) Kelapur, Wani and Yavatmal tahsils of Yavatlal district.

The Act removed that area restriction as a result all Halba/ Halbis in the State were included in the relevant entry.

2. The principal point that falls for consideration is whether ""Halba Koshtis"" is a sub-tribe of Halba/Halbi within the meaning of the entry.

3. In the list, certain sub-tribes find specific mention under the general head. In the Entry No. 19, no sub-tribe is mentioned. The first question that

falls for determination, therefore, is whether it is at all permissible to hold enquiry as to whether a particular group within that tribal community is

included in the general name or not. Both parties revised on several decisions in which treatment to this subject is given. In the case of B.

Basavalingappa Vs. D. Munichinnappa, which is a first case on point, following observations are made :

It may be accepted that it is not open to make any modifications in the Order by producing evidence to show (for example) that though caste A

alone is mentioned in the Order, caste B is also part of Caste A and, therefore, must be deemed to be included in caste A. It may also be accepted

that wherever one caste has another name it has been mentioned in brackets after it in the Order [See Aray (Mala), Dakkai (Dokkalwar) etc.].

Therefore, generally speaking it would not open to any person to lead evidence to establish that case B (in example quoted above) is part of caste

A notified in the Order. Ordinarily, therefore, it would not have been open in the present case to give evidence that the Voddar caste was the same

as the Bhovi caste specified in the order for Voddar caste is not mentioned in brackets after the Bhovi caste in the order"".

Close examination of this decision will indicate that despite these observations an enquiry as to whether the caste ""Voddar"" (not specifically

mentioned in the S.C. Order) is the same as the caste ""Bhovi"" in Mysore State as mentioned in the S.C. Order was permitted and after considering

evidence, it was held that there was no caste known as ""Bhovi"" in Mysore State as it was before 1956 and that ""Voddar"" was equivalent to

Bhovi"".

4. In the case of Bhaiyalal Vs. Harikishan Singh and Others, , the successful candidate was a ""Dohar"" and not a ""Chamar"" and the Court declined

to allow a plea to be raised that Dohar caste in some areas was recognised as a sub-caste of Chamar as the candidate was not a Chamar, in a

particular Constituency and the ""Dohars"" are not included in the Scheduled Castes. In the case of Parsram and Another Vs. Shivchand and Others,

, the above two decisions have been considered and it is held that a ""Mochi"" in Punjab does not fall within the caste ""Chamar"" On facts it was held

that ""Mochi"" and"" Chamar"" are entirely different, the essential difference being that Chamars skin dead animals which Mochis do not in this

background, it is observed:

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"".

5. Occasion arose for the Supreme Court to decide this question vis-a-vis tribe in the case of Bhaiya Ram Munda v. Anirudh Patar, AIR 1961

S.C. 2533. This was a peculiar case relating to an entry of a tribe called ''Munda''. Under this head, several sub-tribe are specifically mentioned,

but tribe ''Patar'' does not find place in it. Question arose whether, in this background enquiry as to whether a ''Patar'' is a part and parcel of

''Munda'' was permissible. Supreme Court considered voluminous evidence and held that ''Patar'' is one of the exogamous group of the tribe

''Munda"" and was, therefore, its part and parcel. That decision has taken cognizance of Basavalingappa and Bhaiyalal (supra), but not of Parasram

and it is held that the decisions in earlier cases do not lend support to the contention that evidence is inadmissible for the purpose of showing what

and entry is S.T. Order was intended to be and that only because some tribes of the main tribe were enumerating the Order and others are not, no

interference can arise that those not enumerated are not included. The following observations are to the point :

The alternative argument advanced by counsel for the appellant has also no substance. It is true that in Part III of the Scheduled to the

Constitution (Scheduled Tribes) Order, 1950 issued under Article 342 of the Constitution the name ""Munda"" is mentioned and similarly the names

of other sub-tribes amongst Mundas are mentioned. Counsel for the appellant contend that if according to Dr. Sachchidananad, Mahalis, Ho.

Bhumijs, Asur, Baiga and Khangars are Mundas, specific mention of some those tribes in the Scheduled Tribes Order clearly indicated that Patars

who are not mentioned therein are not a Scheduled Tribes within the meaning of the Order. This is, however, no warrant for that view. If Patars

and Mundas, because some sub-tribes of Mundas are enumerated in the Order and other are not, no interference will arise that those are not

enumerated are not Mundas. We are unable to hold that because Patars are not specifically mentioned in the list they cannot be included in the

general heading ""Munda"".

The clear ratio of this decision thus appears to be that the name by which the tribe or sub-tribe is known, is not decisive of the matter and that it

can always be shown that name included in the S.T. Order is the general name also applicable to sub-tribes.

6. In the case of Dadaji alias Dina Vs. Sukhdeobabu and Others, Entry No. 18 in part IX of second scheduled of the Act fell for consideration. It

refers to tribe ""Gond"" and several other tribes including ""Mana"" under that main head. Previously the entry contained the word ""including"" which

word was dropped. The question arose whether in view of deletion of the said word, ""Mana"" not having affinity with ""Gond"" could be treated as

independent scheduled tribes. This contention was negatived holding that entry ""Mana"" as it stands despite amendment must mean only those who

have affinity with Gond.

7. In the case of K. Adikanda Patra and Others Vs. Gandua and Others, after taking review of all these cases, it is held that entry ""Savar"" in S.T.

Order includes the tribe ""Jarasavar"" and the following five principles were laid down :--

(1) Generally speaking it would not be open to any person to lead evidence to establish that a particular caste/tribe is a part of caste/ tribe notified

in the Constitution (Scheduled caste/Scheduled Tribes) Order. (2) It is clear from Article 341/342 that in order to determine whether or not a

particular caste/tribe is a Scheduled Cate/Scheduled Tribes within the meaning of Article 341/342 one has to look at the public notification issued

by the President in that behalf. (3) The name by which a tribe or sub-tribe/caste or sub-caste is known is not decisive. Even if the tribe/caste of a

person is different from the name included in the Order issued by the President, it may be shown that the name included in the Order is a general

name applicable to sub-tribe/sub-caste. (4) Para 2 of the Order provides to the extent material that the tribes, or parts of, or group within the

tribes, specified in the Scheduled to the Order shall also be deemed to be Scheduled Tribes. (5) An admission made by a party expressly or by

implication that he is not a member of the Scheduled Tribes/Scheduled Castes is evidence against him, but the evidence is not conclusive.

The above approach finds our respectful concurrence, Under the circumstances, we see no legal bar in holding enquiry as to whether Halba-

Koshti is part and parcel or subdivision of Halba/Halbi or not.

8. It cannot be disputed that in the first place, that decision of the President and in the second place, the decision of the Parliament about including

the particular tribe or sub-tribe in the Order and or the Act is final and no other authority has been given the jurisdiction to change that decisions or

other words to amend the list, on the ground that a particular caste or tribe should or should not have been included. There is no scope for

anybody else to exercise his judgement and substitute his own judgement in the matter. Thus, had it been clear from the Act/Order or from any

other material which can be pressed into service as an external or internal aid to interpret those provisions and/or entry that a case of particular sub

caste/ tribe being included as a sub-division has been considered and rejected, an enquiry about the correctness of that legislative wisdom cannot

be made. In this connection, out attention was invited to the Joint Committee Report headed by Dr. A.K. Chandra submitted to the parliament on

17th November, 1969 for having a draft of the Bill to be introduced in the Parliament to amend the S.C. and S.T. Orders. It does appear from the

report that representation sent to the Joint Committee by Halbi Koshti Samaj was circulated to the members and that the Committee had visited

Nagpur. However, it does not appear that either evidence is taken on the matter as has been done in the cases of several representations about

other Committees or that even without that a conclusion is reached that Halba Koshtis does not from part and parcel of Tribe ""Halba/ Halbi"". It is

thus clear that the enquiries undertaken by several authorities and courts so far and the enquiry which we are making now in these petitions do not

amount to amending the list in any manner whatsoever.

9. Now the enquiry, We do not seem to operate upon a virgin field. Halba/Halbi tribe is found principally in the geographical area comprising of

old C.P. and Berar. Three different High Courts having jurisdiction over these areas have on several occasions adjudicated upon this issue rights

from the year 1951. In the case of Sonabai v Laxmibai, 1956 N.L.J. 725 decided by the Division Bench of erstwhile Nagpur High Court (R.

Kaushalendra Rao & R.P. Deo, JJ.) after considering entire evidence as well as survey report by experts studies etc. a finding is recorded that

Halba-Koshtis have their origin in the aboriginal tribe Halba/Halbi and are therefore, governed by Benares School of Hindu law, It is observed :

It would appear from the Central Provinces Ethnographic Survey (Vol. VIII) and Russell''s Tribes & Castes of the Central Provinces of India (

Vol. III) that the Koshtis in the Central Provinces are a mixed occupational caste composed of elements of diverse origins. There are many sub-

divisions in the caste. The Lad Koshtis come from Gujarat, the Gadhewal from Garha or Jabalpore the deshkar and Maratha from the Maratha

country. The Salewars are of Telgu origin. The Halbis are referred to in the Ethnographic Survey (page 38) as on off-shoot of the primitive Halba

tribe who have taken to weaving. To the same effect is the statement in Russell''s Tribes and Castes that a body of the primitive Halbas have been

incorporated in the Koshtis caste (Vol. III, page 582). The following extract from Russell''s Tribes and Castes relied upon by the learned trail

Judge are opposite and do throw light on the origin of the Halbi Koshtis :

Halba, Halbi - A caste of cultivators and farm servants whose home is the south of the Raipur District and the Kanker and Bastar States; from

here small numbers of them have spread to Bhandara and parts of Berar"" (page 182).

In view of the information available the most probable theory of the origin of the Halbas is that they were a mixed caste, born of irregular alliance

between the Uriya Rajas and their retainers with the women of their household servants and between the different servants themselves."" (page

187).

The caste have a peculiar dialect of their own, which Dr. Grierson describes as follows : ""Linguistic evidence also point to the fact that the Halbas

are an ab original tribe, who have adopted Hinduism and an Aryan language. Their dialect is a curious mixture of Uriya, Chhattisgarhi and Marathi,

the proportions varying according to the locality. In Bhandara it is nearly all Marathi, but in Bastar it is much more mixed and has some forms

which look like Telugu. If the home of the Halbas was in the debateable land between Chhastisgarh and the Uriya country to the east and south of

the Mahanadi, their dialect might, as Mr. Hira lal points out, have originated here. They themselves give the ruined but once important city of

Sihawa on the bank of Mahanandi in this tract as that of their first settlement; and Uriya is spoken to the east of Sihawa and Marathi to the west,

while Chhasttisgarhi is the language of the locality itself and the country extending north and south. Subsequently the Halbas served as soldiers in

the armies of the Ratanpur Kings and their position no doubt considerably improved, so that in bastar they became an important land holding caste.

Some of these soldiers may have migrated west and taken service under the Gond Kings of Chanda, and their descendants may now be

represented by the Bhandara Zamindars, who, however, if this theory be correct, have entirely forgotten their origin. Other took up weaving and

have become amalgamated with the Koshtis caste in Bhandara and Berar."" (pages 187-188).

Referring to the aspect that Halba-Koshtis speak Marathi language and observe custom and manners of the Marathi speaking people and

therefore, they do not belong to the Halba/Halbi tribe, it is observed :

The appellants laid great stress on the fact that the Halbis speak the Marathi language and observe customs and manners of the Marathi speaking

people. It is true that they speak the Marathi language. As they have been living for generations in the region where Marathi is spoken, it is natural

that they should speak in that language. The mere fact that the Marathi language has been adopted by the parties does not bring them under the

Bombay School of law.

The circumstances that the priests of the parties are Maharashtra Brahmins has also been considered and it is held that the aspect is not conclusive

of the matter. The submission that they had abandoned their law of origin, was not accepted.

10. A Division Bench of the Madhya Pradesh High Court (Hidayatullah & Choudhari JJ.) in the case of Madhukar Dekate v. Dean of the Medical

College, Nagpur, Letters Patent Appeal No 157 of 1955, decided on 4th August, 1957 decided that ""Halba-Koshtis"" is ""Halba"" within the

meaning of S.T. Order. Short background of that case may be noticed : The family of the petitioner belonged to Wardha district. Caste certificate

issued by the Deputy Commissioner, Wardha was withdrawn on the ground that the petition belonged to Koshtis community and not to ""Halba

tribe. It was held that the family of the petitioner took to the profession of weaving in Wardha and that wardha district was not in the specified

areas mentioned in the S.T. Order made no difference.

11. Divisions Bench of this Court at Bombay (Deshmukh C.J. & Bhonsale J.) dealt this question in the case of Sunil Nana Umredkar v. Dr. V.G.

Ranade, Writ Petition No. 2404 of 1980, decided on 24th September, 1980. The petitioner was refused admission to the B.J. Medical College,

Pune, in the reserved seat for the scheduled tribes, though he belonged to Halba-Koshtis community. The Director of Social Welfare took the

stand that Halba Koshti is not a Schedule Tribe ""Halba"". This stand and consequential refusal of admission was challenged in the High Court.

During the course of hearing which appears to have went on different dates, the learned Assistant Government Pleader appearing for the

respondent there conceded that the respondent there, i.e. the Director and State were unable to deny the claim of the petitioners as belonged to

scheduled tribe. After considering the material and this concession, the petitioner there was directed to be admitted as Scheduled Tribe ""Halba

candidate. The following observations are to the point :

During some of the hearings that took place before us from time to time, it became apparent that the Deputy Director of Social Welfare was

clearly wrong in rejecting the claim of the petitioner. The Judgement of the Division Bench of the Madhya Pradesh High Court which was shown to

the Deputy Director, as early as on 11th August, 1980 read together with the Scheduled Castes and Scheduled Tribes Order (Amendment) Act,

1976, clearly showed Hindu Halba Koshti is a caste belonging to the Scheduled Tribe. Today, before us, the learned Assistant Government

Pleader conceded, in view of the judgement of the Madhaya Pradesh High Court, as he says that the respondent are unable to deny the claim of

the petitioner of belonging to the Scheduled Tribe. Since the petitioner belongs to the Scheduled Tribe, on merits as can be seen from the evidence

produced and from the concession which has been given by the Deputy Director in the capacity as an expert, there is no doubt that the petitioner is

entitled to a declaration that he belonging to a Scheduled Tribe.

12. Division Bench of Madhaya Pradesh High Court (G.P. Sing, C.J. & Dube, J.) in the case of Prabodh Parahate v. The State of Madhaya

Pradesh and others, Writ Petition No. 1450 of 1981 decided on 21st January, 1982 and hearing the state of Madhya Pradesh and the Scheduled

Tribes Welfare Research and Development Centre of the State of Madhaya Pradesh and District Organiser Scheduled Tribes Welfare

Department, once again ruled that petitioner Prabodh-a-Halba Koshti-belonged to Halba/Halbi tribe. It is observed :

Therefore, the circumstance that the petitioner''s father in that litigation was accepted to belong to ""Halba Koshtis"" community is almost conclusive

for holding that the petitioner belongs to that community. Moreover, the petitioner was granted Scholarship and other concessions during his

educational career on the ground that he is a member of the Scheduled Tribe, Halba or Halbi. It is too late now for the State to contend that the

petitioner is not a member of the Scheduled Tribe. The revenue papers filed in support of the return that the petitioner belongs to Koshti

community do not negative the fact that the petitioner is Halba Koshtis which forms a section of Koshtis community.

13. Division Bench of this Court (one of us Mohta, J. & Dhobe, J.) in the case of Abhay Partae v. State of Maharashtra, 1984 Mh.L.J. 289 once

again held that ""Halba Koshti"" is ""Halba'' and quashed the order of the Director of Social Welfare and the Divisional Commissioner, invalidating the

Halba"" caste certificate issued by the Executive Magistrate, Umrer, to the petitioner in that case. The reasonings adopted in the impugned orders

which did not impress the Court in the whole background are :

(1) Surname ''Parate'' is not found in Halba Tribe.

(2) Weaving occupation was not followed by the Halba Tribe.

(3) This Tribe was not found in Nagpur District.

(4) Social Workers and Institutions referred to by petitioners, merely represented ''Halba Koshtis'' and not ''Halba Tribe''.

It may be mentioned that State of Maharashtra has been issuing circulars in the matter right from 1962 (detailed reference to which we shall make

later). On the basis of the Circular dated 31st July, 1981 issued by the Government of Maharashtra, Social Welfare, Cultural Affairs, Sports and

Tourism Department (which though in force, was not noticed in the impugned orders) it was held in the fact of entry in the school leaving certificate

regarding the candidate being ""Halba"" and the caste certificate showing the same Tribe, no elaborate enquiry was permissible and that the circular

had a binding force.

14. The State of Maharashtra filed SLP before the Supreme Court against the said judgement which was refused, but by making a speaking order

to the effect that the judgement shall govern the petitioner only. That order is reported in State of Maharashtra Vs. Abhay and Others,

15. Nearly six months thereafter, same point fell for consideration once again before another Division Bench of this Court (Pendse & Paunikar, JJ).

in the case of Ku. Kalpana Bhishikar v. Director of Social Welfare, Writ Petition No. 95 of 1985 decided on 14th February, 1985. Petitioner

Kalpana Bhishikar''s sister Mrudula''s ''Halba'' caste certificate was also sent earlier for caste verification before the Caste Security Committee,

which invalidated the same on the ground that Mrudula was ''Halba Koshtis'' and not ''Halba'' Mrudula filed Writ Petition No. 2314 of 1981 for

setting aside the said order and for getting admission in the Medical College as a Scheduled Tribe. The learned Government Pleader made a

statement that Mrudula would be admitted as prayed and hence that petition was withdrawn. Kalpana was also aspirant to be a Medical

Practitioner and applied for admission in Medical College in the same reserved category. Her claim was rejected. She preferred appeal to the

Deputy Commissioner, who quashed the order of invalidation of the caste certificate and remanded the matter to the Committee. Despite repeated

reminders, the case was not disposed of hence she filed that petition in the High Court. She filed primary school leaving certificate describing her as

Halba and the caste certificate issued by the Executive Magistrate dated 29th October, 1980 and certificate from the Dean, Government Medical

College, Nagpur, that the real elder brother of the petitioner-Sanjay-was admitted in the year 1977 in a reserved category of the Scheduled Tribes

in M.B.B.S., cause and in 1982 for M.D. Course. It was held that as the petitioner''s brother and sister were given benefit as a Scheduled Tribe,

there was no justification whatsoever for rejecting the caste claim of the petitioner. Direction was issued to admit the petitioner for course

commencing in academic year 1984-85 and the respondent there, viz. State and the Committee., were directed to stop further enquiry into the

matter.

16. It is submitted on behalf of the petitioner that these decisions rendered during a long span of over 34 years by different Benches of different

High Courts consistently holding that ""Halba Koshti"" is ""Halba"" must have or in any case reasonably supposed to have affected the course of life of

a large portion of the community and not taking a different view, would lead to uncertainty and chaos and hence we should desist from making a

departure. We see considerable force in the submission specially in the background of the undisputed position that even the Government

recognised ""Halba Koshtis"" as ""Halba"" for a long period of nearly ten years between 1967 to 1977 by issuing circulars/instructions from time to

time.

17. Doctrine of Stare decision is well known and is stated at page 103 of Brooms Legal Maxims, thus :

It is, then, an established rule to abide by former precedents, stare decisis, where the same points come again in litigation, as well to keep the

scale of justice steady, and not liable to waver with every new judge''s opinion, as also because, the law in that case being solemnly declared, what

before was uncertain and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter

according to his private sentiments; he being sworn to determine, not according to his own private judgements but according to the known laws of

the land not delegated to pronounce a new law, but to maintain the old.

This rule does admit of exceptions. One such exceptions is that former determination is most evidently contrary to reason, manifestly absurd unjust

or ex-facie illegal. Such is not the case in the present matter. To maintain certainty of law as far as possible, is the inspiration behind the doctrine.

Supreme Courts has emphasised the necessity of maintaining certainty of law, in the following words in the case of The Bengal Immunity Company

Limited Vs. The State of Bihar and Others,

The courts are looked upon by citizens as custodian of law and the constitution and if the courts went on changing their views, the litigant public

may be encouraged to think that it is always worthwhile taking a chance in Courts. Frequent changes have unsettling effect on law and they are

productive of great public inconvenience.

In the case of Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., once again in this aspect is emphasised in the following

words :

Certainty of the law, consistency of rulings and comity of courts-all-flowering from the same principle-coverage to the conclusion that a decision

once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence

or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may

not have the sway of binding precedents. It should be a glaring case, an obstructive omission.

The following observations in that case are also relevant in the present matter :

A litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and we must, without more ado, negative the

present shift in stand by an astute discovery of a plea that the earlier judgement was rendered per incuriam.

18. So zealous have been courts in following this doctrine that even the Supreme Court has held itself to be bound by the interpretation of a local

statute made by a High Court over a number of years. The following observations in the case of Raj Narain Pandey and Others Vs. Sant Prasad

Tewari and Others, of significance.

In the matter of the interpretation of local statute, the view taken by the High Court over a number of years should normally be adhered to and not

disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have an effect if unsettling transactions

which might have been entered in to on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation.

One of the debate before us was that the Scrutiny Committee has made further research and that certain material was not made available before

the Court. Now, the doctrine does not cease to apply only because certain shades of the controversy were not considered. Gujarat High Court in

the case of Ramanlal Keshavlal Soni v. State of Gujarat, AIR 1977 Guj. 76 has in this connection observed :

It is well settled that even if certain aspects of a question were not brought to the notice of the Court, it would decline to enter upon re-

examination of the question since the decision had been followed in other cases. See Mohd. Ayub Khan Vs. Commissioner of Police, Madras and

Another, and T.G. Mudaliar v State of Tamilnadu, AIR 1873 S.C. 974 In (Special Civil Application Nos. 1005)20 and 1531 of 1965 decided on

April 14, 1971 (by Full Bench of this Court, Bhagwati C.J., (as he then was) speaking for the Court pointed out that though there was a

consideration force in the argument urged on behalf of the petitioners in that case and that if the point were arising for decision before the Court for

the first time, it would have been most certainly inclined to accept the same, still since a previous decision of the Bombay High Court rendered

about fifteen years earlier and taken a contrary view and the point was taken as having been settled and numerous awards were made following the

said decision, the doctrine of the stare decisis could be fittingly invoked and that it would not, therefore, be proper to disturb the well settled legal

position. It is on this ground alone that the Full Bench rejected the contention of the petitioners in that case to review the matter. It appears to us

that this is consideration which must weigh heavily with us as well and we see no reason, therefore, to refer the question sought to be reagitated by

the learned Government Pleader to a larger Bench.

So sacred has been considered the certainty and uniformity in law that even when this Court did not agree with the view of the order High Court in

the matter of a Central Statute, it chose not to depart from the earlier decision in the interest of uniformity on the ground that what was held was a

possible view. Of quoted observations in the case of Maneklal Chunilal and Sons Ltd. Vs. Commissioner of Income Tax (Central), Bombay, are

to the following effect :

A special bench of the Madras High Courts has taken the view favourable to the Commissioner and contrary to the view suggested by Mr.

Palkhiwala and in conformity with the uniform policy which we have laid down in Income Tax matters, whatever our own view may be, we must

accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute.

19. Our attention was invited on behalf of the respondents to certain decisions on the point Dwarkadas Khetan and Co. Vs. Commissioner of

Income Tax, Bombay City, Bombay, takes a view that a decision quite contrary to provisions of Income Tax Act need not be followed. Maktul

Vs. Mst. Manbhari and Others, has held that principle of stare decisis should not be followed in case it results in perpetuating the obvious wrong

and illegality. These principles cannot be disputed. We have already noticed that there can be exceptions to the doctrine. The real point is whether

these consistent decisions are so manifestly illegal and wrong that a case of their reversal is made out. They are all considered judgements. Even

Government accepted their correctness in the courts. Added to this is the Government policy independently taking the same view after repeated

deliberations for a number of years. Result of taking a different view now would lead to chaos, absurd contradictions and great public mischief.

There ought to be therefore natural hesitation to overrule these decisions under the circumstances.

20. Let us now take a review of the Governments stand on the issue of ""Halba Koshitis"" vis-a-vis the Order as reflected from time to time by the

Circulars/Resolutions/Instructions in order of time. It is a common point that upto 20th July, 1962, Halba Koshtis were treated as Halbas, in the

specified areas of Vidarbha, as per S.T. Order. On 20th July, 1962, Government of Maharashtra, Education and Social Welfare Departments,

issued a Circular No. CBC 1462/3073/M to the effect that Halba-Koshtis are not scheduled tribes are different from Halba/Halbi and that as

certain persons not belonging to genuine Halba tribe have been taking under advantage, the authorities competent to issue caste certificates should

take particulars care to see that no person belonging to Halba Koshti or Koshti Community is issued a certificate declaring him as member of

Scheduled Tribes. It is known why and how, but on 22nd August, 1967 by Circular No. CBC 1466, 918337/M. 1962 Circular and withdrawn.

On 27th September, 1967, vide Circular No. CBC-1466/91837/M, Government''s intention to treat Halba Koshtis as Halba was once again

reiterated. On 13th September, 1967, vide Circular No CBC 1466-91837-M, the State Government appears to have written a letter to the

Government of India reiterating the stand that Halba Koshtis were Halba. On 30th May, 1968, vide letter No. CBC-1468-2027-O, the state

Government informed the Deputy Secretary to the Lok Sabha that ''Halba Koshtis'''' is Halba/Halbi and that it should be specifically included in the

proposed Amendment Act. On 29th July, 1968, vide Letter No. EBC-1060/49321-J-76325, the Government of Maharashtra, informed the

Commissioner for Scheduled Castes and Scheduled Tribes that Halba Koshtis community has been shown included in the list of Scheduled Tribes

in the State and that the students belonging to that community are eligible for Government of India Post Matric Scholarships. On 1st January,

1969, vide Letter No. TRI/I/H.K./68-69, the Director of Social Welfare, Tribal Research Institute, Pune, informed the State Government that the

State Government cannot under law amend the S.T. Order and tribe not specifically included cannot be treated as the Scheduled Tribes and hence

the position with relation to Halba Koshtis should be clarified. Government gave a reply darted 20th January, 1969 to the effect that treating Halba

Koshti in Vidarbha area as Halba did not amount to amendment of the S.T. Order and that 1962 Circular was issued without obtaining approval

of the Government. On 21st April, 1969, the Government of India wrote to the State Government that in view of Basavalingappa''s (supra) Halba

Koshti community can be treated as Scheduled Tribes only if it is specifically added to the list as sub-tribe and not otherwise. On 24th and 28th

October, 1969, 19th July, 1973 and 6th November 1974, several Circulars to Government officials were issued asking them to recognise ''''Halba

Koshtis'''' as Halbas. Authorities competent to issue caste certificate and the guide lines for enquiry were fixed. On 2nd May, 1975, the Central

Government communicated the points to be taken into considerations at the time of issuance of caste certificate by the Authorities. On 18th

December, 1975, the Government of Maharashtra informed the Commissioner, Nagpur Division, Nagpur that the view taken by the Collector,

Bhandara, to the effect that ''''Halbas'' residing in Bhandara district cannot be treated as Scheduled Tribes, was not correct. ''''Halba'''' caste

Certificate thus were issued to Halba-Koshtis by the Executive Magistrate as per instructions to hundreds of persons.

21. 4th August, 1976 is the date of departure from the policy again. On 18th January, 1977, by Confidential Letter No. CBC-1076/1314/Desk-

V, issued by the Government, informed the District Magistrate, Nagpur that Halba Koshtis should not be issued ''''Halba'''' caste Certificate. On 9th

August, 1977, another Circular No. CBC/1476/13531/Desk-V, was issued by the Government specifying the list of surnames which alone should

be recognised as belonging to Halbas. This circular, however, was withdrawn with immediate effect on 31st August, 1977. On 24th August, 1979

Government of India addressed a reply to the Regional Director, Employees State Corporation to the effect that "Weaver" (Koshti) is a profession

and not the name of a community and that Shri. N.P. Nimje belonged to tribal Halba community. Vide Government Resolution dated 29th

October, 1980, Bearing No. CBC-1680/43669/DV, report of a Committee appointed to streamline the procedure for verifying caste claims was

approved. It contains the form of application, revised instructions as detailed in Appendix A (along with a check slip) to be followed by the

authorities. It provided for appeals to the Divisional Commissioner. It was further mentioned that as far as admissions in Medical and Engineering

courses are concerned, the certificate should be treated as provisional and should be scrutinised within a period of two months. By a Circular

dated 24th April, 1981 Bearing No. CBC/1684/309/D-11, the work of verifying correctness of caste certificate was entrusted to a Committee of

three persons including the Director.

22. Then follows a Circular dated 31st July, 1981 Bearing No. CBC-1481/(703)/D.V., (on the basis of which Abhay Parate was decided)

reading as under:

Government is pleased to direct that until further orders, in so far as Halbas are concerned, the School Leaving Certificate should be accepted as

valid for the purpose of the caste.

2. Government is further pleased to direct that the advantages accrued to the Scheduled Tribal under the Constitution will go to the Tribals to the

extent of 7% and those going to Halbas who mainly reside in Vidarbha Region and large sections of whom earn their livelihood from weaving will

be in additions thereto. Consequently, after the selection of candidates belonging to Scheduled Tribes including Halbas is completed, the number of

seats in respective educational institution should be increased to the extent of number of selected Halbas so that the Scheduled Tribes who are left

as a result of selection of Halbas are admitted.

On 19th August, 1981, another circular was issued clearing the above quoted circular but on 28th October, 1981 the Circular dated 19th August

was withdrawn. Thus cloud on circular dated 31st July, 1981 was cleared in a short period of two months. On 9th November, 1981, a policy

about appeals before the Government was varied and the entire appellate work entrusted to the Commissioner. An extract of communication

dated 30th June, 1982 by the Government of India shows that Halba Koshti in the State of Madhaya Pradesh is not mentioned in the Act and that

it was different from entry ""Halba"" as applied to Madhaya Pradesh. On 6th September, 1983, another Circular (considering an Abhay Patare) was

issued containing following instruction in respect of certificates of all students belonging to backward classes in general :

(i) Where the caste mentioned in the caste certificates and School Leaving Certificates tally, the claim regarding caste certificate may be held as

valid, except in cases where there is a doubt in view of similarity of nomenclature of certain caste or in view of specific complaints.

(ii) Similarly, the Scrutiny Committee should not be unduly influenced by letters of certificates issued by the voluntary organisations and should

consider such letters of recommendations or costs certificates issued by these organisations in the context of other available evidence.

(iii) Cases, where the caste claims of the bold relations viz., brother, sisters has to be held as valid by Government/ Divisional Commissioner/ High

Courts/Supreme Court, may be considered as valid provided the candidates produce affidavits to the effect that they are bold relations viz.

brother/sister and first cousin before the Caste Verification Committee.

On 23rd September, 1983, a circular was issued instructing the authorities that instructions in circular dated 6th September, 1983 are not

applicable to Scheduled Tribes, since the subject of verification of caste certificates of Scheduled Tribes has been allotted to the Tribal Welfare

Department. On 10th December, 1984, the Government, the issued a Circular stating that the Government has appointed an Expert Committee

(Ferreira Committee) to once again examine the case of Halba Koshtis, and till a final decision in the matter is taken by the Government, the

additional reserved vacancies in educational institutions should be created for Halba./Halbi engaged in the profession of weaving, viz. Halba

Koshtis. On 13th February, 1984, Central Government informed the State that care should be taken to see that only in genuine cases certificate is

issued and that it has been brought to its notice that certain tribes, such as, Jagam, Rodis, Kapas, Halba Koshtis etc. who do not find place in the

Act are not entitled to the said certificate.

23. Vide resolution dated 23rd January, 1985, a new Scrutiny Committee was appointed for verification of caste certificate of Scheduled Tribe in

general. It may be mentioned that though several circulars were withdrawn, the circular dated 31st July, 1981, dealing specially with Halba tribe

was not. It is for the first time on 8th March, 1985 that the Committee was authorised to hold enquiry ""even by going beyond the Government

Resolutions mentioned at (i) and (ii) above (i.e. 29th October, 1980 and 31st July, 1981), "" if it has reason to believe that the certificate is

manipulated or fabricated or has been obtained by production is sufficient evidence etc."" Thus, it is clear that upto 8th March, 1985 the enquiry

was governed by Circular dated 31st July, 1985. From a Government Resolutions dated 24th April, 1985, it appears that the Government has

appointed a Sub-committee to prepare guide lines useful for the decision of the tribe claims. Sub-committee forwarded the guide lines and the new

Scrutiny Committee had approved those guidelines. The guide lines, inter alia, contain a comparative statement about the communities having

similar nomenclature of which undue advantage was being taken. Item No. 19 contains comparative information regarding Halba/Halbi on one

hand and Koshtis on the other. It is mentioned that real Halbas are predominately in Chandrapur, Gadchiroli and Bhandara District, and as per

1971 Census their loyal number in Maharashtra was 7025. They speak Halba/Halbi language and that weaving is a taboo in that tribe. Koshtis as

per those guide lines worship Hindu Gods, celebrate Hindu festival, their population is about 5-6 lakhs and that they have of late mala fide started

calling themselves as Halba Koshtis and very recently only as Halbas. Surnames commonly found in Koshtis were also mentioned in the said

communications.

24. We entertain no doubt that decision taken by different wings of the Government on the question of a particular tribe falling within the purview

of the S.T. Order, as amended by the Act, is not decisive of the matter. It is quite clear that the list once prepared by the President can be

amended only by the Parliament and by none else. It is, however, equally clear that courts can go into the question whether any particular sub-tribe

is a part and parcel of the Tribe mentioned in the list and the interpretation put on the entry by the courts is binding on the Government and their

officials and that effect of the courts interpretation and directions cannot be ignored even by the legislation what of by reports of the experts or the

Scrutiny Committee. They do not have the power to decide how various Court judgements are wrong ad this precisely has been done by the

Committee. It is of significance that no Government Circular has taken note of the Court decisions on the specific point about Halba Koshtis

Central Government Circular did make a reference to Basavalingappa but subsequent Supreme Court decisions on the point and final law as

declared by Supreme Court under Article 141 was lost sight of as a result Central Government always remained under wrong impression that law

wrong impression that law does not permit enquiry about a sub-tribe being a part of the tribe if sub-tribe is not specifically mentioned and

therefore, earlier stand of State Government amounted to amending the Act. It is submitted on behalf of the respondents that the Court decisions

have been rendered in altogether different background and that ratio of no case is to the effect that Halba Koshtis are sub-division of Halba. This

submission is not well founded. There is a well defined distinction between a ""conclusion"" and a ""ratio"" and the two cannot be mixed up. Clear ratio

of the decisions is that Halba Koshtis are part and parcel of aboriginal tribe Halba.

25. Law on the point is well settled. In the case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, , Life Insurance

Corporation was directed payment of bonus for the year 1975-76 to it Class III and Class IV employees in terms of the Settlement dated 24th

January, 1974 by Calcutta High Court. This judgment was allowed to become final. Immediately after pronouncement of the decision, Parliament

enacted the Life Insurance Corporation (Modification of Settlement) Act, (72 of 1976) by which specific settlements were excluded from the

purview of the Industrial Dispute Act, 1947. The relevant provision in the Act 72 of 1976 do not mention that the object of the enactment was to

set aside the result of the Calcutta High Court''s direction. It was held that under the circumstances even if the object was to set aside the Court''s

judgment, the right acquired under mandamus jurisdiction under Article 226 of the Constitution cannot be taken away even indirectly by an

ordinary Act of Parliament. Despite the amendment, Life Insurance Corporation was held to be bound to obey the mandamus, on the reasoning

that the direction issued by the Calcutta High Court remained untouched and could not be taken away, as right to enforce the mandamus had

become final. No doubt, the Act 72 of 1976 was held to be valid, but the Life Insurance Corporation was directed to obey the writ. Concurring

with the majority but in a separate note, Beg, C.J., observed :

The question could well arise whether this was really the exercise of a legislative power or of a power comparable to that of an appellate authority

considering the merits of what had passed into a right to property recognised by the courts. This Court has decided in Smt. Indira Nehru Gandhi

Vs. Shri Raj Narain and Another, that even a constitutional amendment cannot authorise the assumption of a judicial power by parliament. One of

the tests laid down there was whether the decision is of a kind which requires hearing to be given to the parties, or, in other words, involves at least

a quasi judicial procedure, which the Parliament does not, in exercise of its legislative power follow. A decision reached by the Central

Government u/s 11(2) of the Act is the result of a satisfaction on matters stated there and would imply quasi judicial procedure where the terms of

a settlement had to be reviewed or revised. But the legislative procedure, followed here, does not require that to be done. It would, in any event be

unfair to adopt legislative procedure to undo such a settlement which had become the basis of a decision of a High Court. Even if legislation can

remove the basis of a decision it has to do it by an alteration of general rights of a class but not by simply excluding two specific settlements

between the Corporation and its employees from the purview of section 18 of the Industrial Disputes Act, 1947, which had been held to be valid

and enforceable by a High Court. Such selective exclusion could also offend Article 14"".

26. Relying on Articles 162, 256 to 258, 339(2) of the Constitution it is submitted on behalf of the one of intervenors-Adivasi/Halba Samaj

Sanghatana, Katangi, district Bhandara-opposing the petitions-that instructions issued by the Central Government in the matter have overriding

effect over the instructions by the State Government. That aspect assures little importance in the view we have taken about binding nature of the

Circulars. It may be mentioned at this stage that three organisations, such as---(i) Halba Sabha Mahasangh, (ii)) Adiwasi Sangharsh Samiti and (iii)

Halba Sewa Samaj Sanghatana have intervened to support the petitioner. We have not concerned with the dispute between these two sets of

organisations each calling the Government decisions as politically motivated. We see no material to come to that conclusion.

27. What must have weighed with the Government is the misuse of benefits of backward classes by pseudo backward classes. Anxiety to examine

the matters more carefully is understandable, but that does not permit having a recourse to get over binding effect of judgments rendered on the

specific issue after hearing all concerned and that too repeatedly. Indeed, no Government resolution has permitted such course to be followed.

Supreme Court in Abhya Parate had no occasion to examine the correctness of ratio of other decision on the point. Indeed, it refused to grant

leave but with a rider that the decision is confined to the petitioner there. These direction are not a green signal to ignore the ratio of all the

decisions put together. That the authorities in various orders of invalidation chose not only to ignore them but even find fault with the several Court

judgment that too before special leave was rejected by the Supreme Court is yet a different matter.

28. This takes us to a point about scope of enquiry made before 8th March, 1985 when the Scrutiny Committee was supposed to confine the

enquiry to a limited extent as mentioned in the Circular dated 31st July, 1981 Clear ratio of the Court''s decision in Abhya Parate is :

Shri Madkholkar, the learned Counsel for the petitioner, placing heavy reliance on the aforesaid circular, has contended that both the respondents

Nos. 2 and 3 committed an error in not noticing the said Circular and in not accepting caste mentioned in the School Leaving Certificate as correct.

We see considerable force in the submission. It is unfortunate that attention of the respondents was not drawn to the said circular, which has a

binding force. In the face of the said Circular it was futile to hold such an elaborate enquiry in the matter. Shri Jaiswal, the learned Assistant

Government Pleader, has contended before us that in view of the instructions contained in the subsequent Circular Bearing No.

CBC/1680/65396/(499) D-V, dated 6th September, 1983, the respondents Nos. 2 and 3 were perfectly justified in going behind the said circular

of 1981 and to adjudicate upon the question after applying various tests laid down therein. It is not possible for us to accept this contention. Apart

from the fact that these instructions are issued subsequent to the decisions of the respondents No. 2, dated 16th May, 1983, they are general in

nature and cannot have an overriding effect on Circular dated 31st July, 1981 which is issued with reference to a particular Tribe only. It is

nobody''s case that the said School Leaving Certificate is not genuine-------- Obvious object behind these guidelines seems to be not to reopen

the same question again and again and to avoid conflicts of opinion of this otherwise difficult question of proving one''s origin.

The later part of the observations were made with relation to the necessity of taking a consistent view in the case of near relatives. In kavita

Bhishikar the same view was reiterated and the Committee was even prohibited from making further enquiry. In our judgement, therefore, as far as

enquiries before 8th March, 1985 are concerned, their correctness will have to be judged on the basis of Circular dated 31st July, 1981. Clear

instructions are that in case the caste certificate tallies with the school Leaving certificate and indicates tribe ""Halba"" it should be validated. Under

the circumstances, if in the face of that Circular specially after it was interpreted in Abhay Parate, the parties have not bothered about any other

aspects on which information was sought in the questionnaire, it would be unfair to draw and adverse inference against them on the basis that they

did not supply proper material. We hasten to add that enquiries made after 8th March 1985 will stand on altogether different footing. The said

circular of 8th March, 1985 cannot have retrospective operation. The following dictum in Ramana Dayaram Shetty Vs. International Airport

Authority of India and Others, is relevant.

It is well settled rule of administrative law that an executive authority must be rigorously held to the standards for which it professes its actions to

be judged and it must scrupulously observe those standards on pain of invalidation of an violation of them.

29. By and large, orders invalidating certificates are passed on the basis of answer to the questionnaire prepared by the Committee. The questions

relate to origin, old traditions, customs, festivals, Gods and Goddesses, language of origin, racial features, names of close relatives etc. This historic

information is sought form the new generations which quite obviously has assimilated in the general Indian population. Professor Ghurye in his

work, ""The Scheduled Tribes"" has pointed out how factors like religion or occupation or racial features have proved inadequate when attempting

to distinguish the tribal people from the non-tribal population in India. Mr. A.R. Desai in his work ""Tribes in Transition"" has observed with

reference generally to all tribes that nearly 4/5 of their population has completely assimilated in the Hindu community and have been exposed to the

influences of religions, economic and socio-cultural forces of Hindu Society. Andre Beteille in his work ""The Definition Of Tribe"" has observed :

In the country, groups which correspond closely to the anthropologist''s conception of tribe, have lived in long association with communities of an

entirely different types. Except in few areas, it is very difficult to come across communities which retain all their pristine tribal character. In fact,

most such tribal groups show in varying degree elements of continuity with the larger society of India---------The linguistic boundary has been

somewhat more impermeable, but this too has been steadily breaking down---------The abandonment of tribal dialects in favour of one of the

regional languages appears to have been accelerated during the last few decades.

30. It is thus very difficult to reach a correct finding about anybody''s origin on the basis of answers to such questions given in 1980. In the case of

Uttam Bidesing Rajput v. State of Maharashtra, Writ Petition No. 1915 of 1983, decided on 16th July, 1983, Division Bench of this Court

(Chandurkar, C.J. & Pendse, J.) held that enquiry conducted by the Director of Social Welfare on the basis of such questionnaire is clearly

unsatisfactory. The same Bench on that very day passed similar order in the case of Madhaorao Rajput v. The State of Maharashtra, Writ Petition

No. 1914 of 1983. It is further observed that merely because school leaving certificate does not state the caste, the claim could not be rejected.

The same Bench in the case of Bijendra Pratap Patel v. S.L. Dipali, Writ Petition No. 2749 of 1982, decided on 23rd June, 1983 held, inter alia,

that if the brother of the petitioner was given the benefit of a caste certificate earlier, the petitioner could not be deprived of the same benefit. In this

background the order passed by the Chief Metropolitan Magistrate, who was an authority to issue certificate and who had refused to grant it, was

quashed.

31. The Committee has mainly rejected the claim on the ground that petitioners forefathers were---(i) following weavers occupation which was a

taboo among Halbas, (ii) worshipping Hindu Gods and celebrating their festivals, (iii) speaking Marathi language and not Halbi dialect, (iv) having

no animistic tendencies and were devotees of Kalba Swami at Dhapewada a Guru of Koshtis. It is further held that Halbas were largely

concentrated in Chanda district and their population as per Census of 1971 in the whole Maharashtra was 7205. We are conscious that above is

expert opinion and there is little scope for us to question it, but we do find that most of the above considerations are either relevant or basically

incorrect. Take for example, the finding that weaving was a taboo among Halbas. Russell and Hiralal in their authoritative and standard book

published as back as in 1916 have observed how a section among them took to weaving (Page 187-188 quoted in Sonabai). At page 581 in that

book is a chapter relating to ""Koshti"". The following observation under the heading ''sub-divisions'' are important :

The caste have several sub-divisions of different types. The Halbis appear to be an offshoot of the primitive Halba tribe, who have taken to

weaving : the Lad Koshtis come from Gujarat, the Godhewal from Garha or Jubbulpore, the Deshkar and Martha from Maratha country, while the

Dewangan probably take their name from the old town of that name of the Wardha river.....The above names show that the caste is of mixed

origin, containing a large Telugu element, while a body of the primitive Halbas has been incorporated into it.

It is surprising that in the guide lines for issuance of Caste Certificate, these observations are not only not communicated to the authorities but

indeed quite a contrary basis is communicated, viz. weaving was a taboo among them. We find first reference to this aspect of weaving being a

taboo in a note of ""Halba Tribe of Maharashtra State"" prepared by Shri N.S. Hajari Research Officer, Tribal Research Institute, Pune, reading as

under :

Generally, the tribe is not an occupational group as that of case. In fact, it has been informed that weaving is considered to be a taboo amongst

this tribal group.

Government of Maharashtra in 1982 has published a book called ""The Tribes of Maharashtra"" edited by Dr. G.M. Gare, (one of the members of

the Committee) and Shri M.B. Aphale. In that book also, the editors have made the similar observations in Chapter VI relating to Halba. The basis

of these observations have not been brought to our notice. What is intriguing is that the Russell''s observations even does not find place in this work

though in the bibliography the said book is mentioned. It is of interest to note that certain Committees have recorded a finding that Russell''s

observations are incorrect. We are informed by the respondents that these findings might have been reached on the basis of recent spot inquiries.

32. The other considerations like the petitioner (i) not having original animistic tendencies, (ii) worshipping Hindu deities and celebrating Hindu

festivals and (iii) speaking not Halbi but Marathi language, also cannot be the determining factors. In ""Indian Linguistics"" by Sudhibhusan

Bhattacharya Bagchi, Volume 1957, it is mentioned :

It will thus be incorrect to assume that Halbi is the aboriginal speech of Halba people. It is safer to conclude that the so called Halbi is the Aryan

speech of the track.

It will be useful to note the following observations made by Sherring in ""Hindu Tribes and Castes"" (1879 : Volume II : in section XXIX ''The Halba

or Halba Gond Tribe'' : page 147) :

They affect the strictness of Hindus, for they neither eat the flesh of cows nor of swine, and wear the sacred cord.

Gazetteer of the Central Provinces of India (2nd Edition 1870) mentions about the Tribe ''Halba'' (Page 414) :

Expect in the jungles, they have generally become Hinduised, and abandoned most of their peculiar observances.

Now about the figures of population. Bhandara District Gazetteer, edited by R.V. Russell (Volume A 1908, at page 64, para 54) has mentioned

that the number of Halbas in the district was 17,000. IT can safely be assumed that during the period of nearly 75 years that their number must

have multiplied. The guide lines show total Halba population in whole of Maharashtra in 1971 as 7105 only and that too mainly in Chandrapur and

Yavatmal district. Chanda District Gazetteer, edited by L.F. Bagble and A.E. Nelson, Volume A 1909 states that comparatively very few Halbas

are to be found in that district. Census of India 1891, Vol. XI, Part I, page 186-187 indicates that out of 97,913 Halbas, 18,425 are from

Bhandara district and 7,199 from Chanda District. Census of India, 1901, Vol. VIII, Berar Part I, page 185 makes the following observations:

The Halbis, who are weavers, have increased from 2,841 to 3,124 or by nearly 10 percent. In 1881 they number on 2205. More than half of

their total population (1558) was enumerated in the Ellichpur taluq as was done at the two previous census. This caste is not found in Buldana

District.....

In Chhattisgarh large number of Halbas have embraced Kabirpanthi sect. In Raipur they speak Chhattisgarhi dialect.

We have referred to some of these aspects merely to indicate that many of the assumptions have no basis whatsoever. So called spot studies in

1980 assuming they are valid-cannot give correct clue to the origin of a tribe. Independent and unbiased observations of element authors made

nearly a century ago cannot be just ignored or lightly termed as incorrect and baseless-as has been in some of the orders impugned before us.

33. We have heard many other matters along with this petition, as some points are common. In some cases, even birth certificates of petitioner''s

grandfather describes him (the grandfather) as ""Halba"" and in some even in registered documents of 1920, the petitioner''s ancestors are described

as ""Halbi"" and yet their Caste Certificate are invalidated on the basis of answers to questionnaire. In some matters, invalidation has taken place in

the case of the same individual despite earlier validation order of appellate authority. In many cases no consideration whatsoever is shown for the

fact that near relatives have been declared/treated as ""Halba"" in the matter of reservations as Tribes. Out of curiosity, we enquired from the learned

Counsel for the respondents as to whether there is any case in which certificate has been validated. We were told only one such case exists. The

file of that case was very fairly produced before us. It is interesting to note that in that case even record earlier to 1960''s was not produced and

the candidate was following Hindu religion.

34. Our attention was invited to the case of C.M. Arumugam Vs. S. Rajgopal and Others, in support of a contention of the respondent that

Koshtis is separate caste to which the petitioners belong and even assuming that they originally belonged to aboriginal Halba tribe, it must be held

that they have lost their original identity and law of origin in view of amalgamation or total assimilation with them. We find it difficult to accept this

submissions for variety of reasons. Now, Koshti is a caste of mixed origin and exogamous in character and their is no material to come to the

conclusion that Halbas have abandoned or lost their identity altogether. The fact that they call themselves as Halba-Koshtis itself indicates no such

intention or effect. Moreover total loss of originality cannot be easily assumed. There has to be sufficient material to hold so. No such material

exists. This point is canvassed for the first time in the course of hearing before us. In the past, this aspect was argued, considered and rejected,

though in somewhat different context in Sonabai. On behalf of intervenes opposing this petition, it is argued that finding about petitioner being a

Koshtis"" is not specifically challenged in the petition. Now petitioners''s clear and consistent case throughout has been that he is ""Halba"" which

implies the challenge to that finding and this contention has no force.

35. During the course of hearing, report of the Ferreira Committee (consisting of some members from the Caste Scrutiny Committee) which was

constituted one again to examine the question of Halba Koshtis and was placed before us. We are informed that Government has yet not taken

final decision and the said report which appears to be in conformity with the stand of the Government taken after 1976. It fully supports the

reasoning of the Caste Scrutiny Committee including about Court decisions. Now, the very fact that once again a Committee was constituted

shows that there is rethinking over the issue once again. That, however, is a different matter and cannot have impact on the decisions on merits.

36. All that remains is consideration of challenge to Circulars dated 31st July, 1981 and 23rd September, 1983, on the ground that they violate

Article 14. True it is that by the later Circular the subject of verification of Caste Certificate of only Scheduled Tribes (and not Scheduled castes)

has been allotted to the Tribal Development Department. But we are unable to see how that factor by itself violates rights and equality. They are

two different classes. On independent department dealing exclusively with one class has issued the said Circular about the class for reasons of

which it can be the best Judge. Thus, this challenge made by the petitioner has no merit. Equally meritless is the challenge to the Circular dated 31st

July, 1981 by the intervenor opposing the petition. Problem of ""Halba Koshtis"" was peculiar, it had history and background. Government itself had

never been able to take a definite stand in the matter and hence if only limited enquiry was hold permissible, there was nothing discriminatory about

it. For the reasons already discussed it is not possible even to accept the contention that Circular was contrary central Government Circulars and

was, therefore, bad on that account.

37. As a result of the discussions above, we summarise the conclusions as under :

(1) It is permissible to enquire whether any sub-divisions of a Tribe though not mentioned in the Act is a part and parcel of the Tribe mentioned

therein.

(2) The decisions rendered by the courts from time to time about Halba Koshtis being part and parcel of ""Halba/Halbi"" tribe are binding on the

government and authorities constituted by it.

(3) The scope of enquiry in cases relating to students admissions before 8th March, 1985 was limited to points mentioned in the Circular dated

31st July, 1981.

(4) It is impermissible to take inconsistent stand about a tribe in cases of near relatives.

(5) Circulars dated 31st July, 1981 and 23rd September, 1983 are valid.

(6) ""Halba Koshtis"" is a sub-division of main tribe ""Halba/Halbi"" as per Entry No. 19 in the Act as applied to Maharashtra.

(7) Every Koshti is not Halba Koshtis.

38. The petitioner Milind Katware''s Caste Certificate and School Leaving Certificate show him as ""Halba"" Orders of invalidation are passed

before 8th March, 1985. Even his father''s caste is shown as ""Halba"" in the School Leaving Certificate of the father for the year 1947. Petitioner

had applied to 1st M.B.B.S. course with the respondent No. 4-Dean, Medical College, Nagpur. The petitioner was otherwise entitled to be

admitted in a reserved category.

39. In the result, the petition is allowed and the impugned orders invalidating the Caste Certificate are quashed and set aside. The petitioner is

declared to be belonging to ""Halba"" Tribe. The respondent No. 4 is directed to admit the petitioner to M.B.B.S. course for the current year 1985-

86, if necessary by creating supernumerary post. No order as to costs.

40. At this stage, the learned Counsel for the respondents pray for suspension of this judgment for a period of one month. In view of the fact the

matters relate to the students'' admissions and courses have already commenced, the prayed is rejected.