



Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4919 OF 2017

- 1. MAHARANI AHILYADEVI SAMAJ PRABODHAN MANCH**
MAHARASHTRA RAJYA MUMBAI,
Registered under the Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025 through its President, Mr Madhukar Babarao Shinde.
- 2. MURARJI ARJUN PANCHPOL-DHANGAR,**
H/19/404, Press Enclave CHS, Pratiksha Nagar, Sion (East), Mumbai 400 022.
General Secretary of:
Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under the Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.

SHEPHALI
SANJAY
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3. **DR JAGANNATH PRASAD BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar Bridge, Dahisar (West),
Mumbai 400 068.
Executive Member, National Co-ordinator of Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.

... **PETITIONERS**

~ **VERSUS** ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of Tribal Affairs having its office at Ground floor, 'D' Wing, Shastri Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
23074467
FAX: 011-23070351
Email: prao.hrd@nic.in.
2. **THE CHAIRPERSON,**
National Commissions for Scheduled Tribes, having its office at: 6th Floor, B-Wing, Loknaya Bhavan, Khan Market, New Delhi 110 003
Telephone No 011-24646954.
3. **THE SECRETARY,**
Ministry of Law & Justice,
Govt of India, having its office at 4th Floor, A-Wing, Shastri Bhawan, New Delhi 110 001.

4. **THE REGISTRAR GENERAL AND CENSUS COMMISSIONER OF INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011. Tel Nos: +91-11-23070629, 23381623, 23381917,
23384816, Email: rgoffice.rgi@nic.in.
5. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai 400 032.
6. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension
Building), Madam Cama Road,
Hutatma Rajguru Chock,
Mumbai 400 032.
Phone – 022-22833665, 22048790
Email: tribal.info@maharashtra.gov.in.
7. **THE CHAIRMAN,**
Maharashtra State Scheduled Castes &
Scheduled Tribes Commission, Admn.
I Building, AG Khan Road, Worli Sea
Face, Mumbai 400 018.
8. **THE COMMISSIONER,**
Tribal Research & Training Institute,
28, Queen’s Garden, Pune 411 001.
Phone: 020-26332380, 020-26360941,
020-26332380
Fax: 020-26360026
Email: trti.mah@nic.in.

... RESPONDENTS

WITH
CIVIL APPLICATION NO. 864 OF 2019
IN
WRIT PETITION NO. 4919 OF 2017

1. **ADIVASI SAMAJ KRUTI SAMITI,**
A trust registered under the provisions
of Maharashtra Public Trusts Act 1950,
through its Secretary, Satish
Chandrakant Lembhe, having its office
at 53/1-B, Vinayak Nagar, Ganpati
Chowk, Navi Sangvi, Pune 61.
2. **SAHYADRI ADIVASI JESHTA
NAGRIK SANGH, PUNE,**
having office at Survey No. 80/2/1,
Sudarshan Nagar, Pimple Gurav,
Pune 61.
3. **TRIBAL DOCTORS FORUM,**
Sai Prasad, Flat No. 1, Survey No. 70/1,
Samata Nagar, Navi Sangvi,
Pune 27.

... APPLICANTS

~ IN THE MATTER BETWEEN ~

1. **MAHARANI AHILYADEVI SAMAJ
PRABODHAN MANCH
MAHARASHTRA RAJYA MUMBAI,**
Registered under Public Trusts Act
1950 Mumbai No F-18219 (Mumbai)
having its address at B/1104,
Siddhivinayak Horizon, Veer Nariman
Road, Prabhadevi, Mumbai 400 025
through its President, Mr Madhukar
Babarao Shinde

2. **MURARJI ARJUN PANCHPOL-DHANGAR,**
H/19/404, Press Enclave CHS,
Pratiksha Nagar, Sion (East),
Mumbai 400 022.
General Secretary of: Maharani
Ahilyadevi Samaj Prabodhan Manch
Maharashtra Rajya Mumbai, Registered
under Public Trusts Act 1950, Mumbai
No F-18219 (Mumbai) having its
address at B/1104, Siddhivinayak
Horizon, Veer Nariman Road,
Prabhadevi, Mumbai 400 025.
3. **DR JAGANNATH PRASAD
BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar
Bridge, Dahisar (West),
Mumbai 400 068.
Executive member, National Co-
ordinator of Maharani Ahilyadevi Samaj
Prabodhan Manch Maharashtra Rajya
Mumbai, Registered under Public
Trusts Act 1950, Mumbai No F-18219
(Mumbai) having its address at B/1104,
Siddhivinayak Horizon, Veer Nariman
Road, Prabhadevi, Mumbai 400 025.

... PETITIONERS

~ VERSUS ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
23074467, Fax: 011-23070351
Email: prao.hrd@nic.in.

2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003
Telephone No: 011-24646954.
3. **THE SECRETARY,**
Ministry of Law & Justice,
Govt of India, having its office at 4th
Floor, A-Wing, Shastri Bhawan,
New Delhi 110 001.
4. **THE REGISTRAR GENERAL AND
CENSUS COMMISSIONER OF
INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011.
Tel Nos: +91-11-23070629, 23381623,
23381917, 23384816.
5. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai 400 032.
6. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension
Building), Madam Cama Road,
Hutatma Rajguru Shock,
Mumbai 400 032.
Phone – 022-22833665, 22048790.

7. **THE CHAIRMAN,**
Maharashtra State Scheduled Caste &
Scheduled Tribes Commission, Admn.
Building, AG Khan Road, Worli Sea
Face, Mumbai 400 018.
8. **THE COMMISSIONER,**
Tribal Research & Training Institute,
28, Queen's Garden, Pune 411 001.
Phone: 020-26332380, 020-6360941,
020-26332380.

... RESPONDENTS

WITH
CIVIL APPLICATION NO. 865 OF 2019
IN
WRIT PETITION NO. 4919 OF 2017

**TRIBAL RIGHTS PROTECTION
COMMITTEE,**
Maharashtra State, through its Secretary,
Suhas Vechya Naik Age 45 years, Occ. Social
Worker, R/o Rampur, Post Modalpada,
Tehsil-Taloda, District Nandurbar.

... INTERVENER
APPLICANT

~ IN THE MATTER BETWEEN~

1. **MAHARANI AHILYADEVI SAMAJ
PRABODHAN MANCH
MAHARASHTRA RAJYA MUMBAI,**
Registered under Public Trusts Act 1950,
Mumbai No F-18219 (Mumbai) having
its address at B/1104, Siddhivinayak
Horizon, Veer Nariman Road, Prabha
devi, Mumbai 400 025 through its
President Mr Madhukar Babarao Shinde

2. **MURARJI ARJUN PANCHPOL-DHANGAR,**
H/19/404, Press Enclave CHS, Pratiksha
Nagar, Sion (East),
Mumbai 400 022.

General Secretary of:
Maharani Ahilyadevi Samaj Prabodhan
Manch Maharashtra Rajya Mumbai,
Registered under Public Trusts Act 1950,
Mumbai No F-18219 (Mumbai) having
its address at B/1104, Siddhivinayak
Horizon, Veer Nariman Road,
Prabhadevi, Mumbai 400 025.

3. **DR JAGANNATH PRASAD BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar
Bridge, Dahisar (West),
Mumbai 400 068.

Executive member, National Co-
ordinator of Maharani Ahilyadevi Samaj
Prabodhan Manch Maharashtra Rajya
Mumbai,
Registered under Public Trusts Act 1950,
Mumbai No. F-18219 (Mumbai) having
its address at B/1104, Siddhivinayak
Horizon, Veer Nariman Road,
Prabhadevi, Mumbai 400 025.

... **PETITIONERS**

~ **VERSUS** ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' wing, Shastri
Bhawan, New Delhi.

2. **THE CHAIRPERSON,**
National Commissions for Scheduled Tribes having its office at: 6th Floor, B-Wing, Loknayak Bhavan, Khan Market, New Delhi 110 003.
3. **THE SECRETARY,**
Ministry of Law & Justice,
Govt of India, having its office at 4th Floor, A-Wing, Shastri Bhawan, New Delhi 110 001.
4. **THE REGISTRAR GENERAL AND CENSUS COMMISSIONER OF INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011.
5. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai 400 032.
6. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension Building), Madam Cama Road,
Hutatma Rajguru Shock,
Mumbai 400 032.
7. **THE CHAIRMAN,**
Maharashtra State Scheduled Caste & Scheduled Tribes Commission, Admn. Building, AG Khan Road, Worli Sea Face, Mumbai 400 018.

8. **THE COMMISSIONER,**
Tribal Research & Training Institute,
28, Queen's Garden, Pune 411 001.

... **RESPONDENTS**

WITH
CIVIL APPLICATION NO. 812 OF 2019
IN
WRIT PETITION NO. 4919 OF 2017

VANVASI KALYAN ASHRAM,
Registered under the Bombay Public Trusts
Act 1950 through its Authorized
Representative, Mr Sandip Sabale,
Age 39, Occupation: Service, having its
registered office at 15, Krushi Nagar,
College Road, Nashik.

... **APPLICANT**

~ **IN THE MATTER BETWEEN~**

1. **MAHARANI AHILYADEVI SAMAJ
PRABODHAN MANCH
MAHARASHTRA RAJYA MUMBAI,**
Registered under Public Trusts Act
1950, Mumbai No F-18219 (Mumbai)
having its address at B/1104,
Siddhivinayak Horizon, Veer Nariman
Road, Prabhadevi, Mumbai 400 025
through its President Mr Madhukar
Babarao Shinde.
2. **MURARJI ARJUN PANCHPOL-
DHANGAR,**
H/19/404, Press Enclave CHS,
Pratiksha Nagar, Sion (East), Mumbai
400 022.
General Secretary of: Maharani

Ahilyadevi Samaj Prabodhan Manch
Maharashtra Rajya Mumbai, Registered
under Public Trusts Act 1950, Mumbai
No F-18219 (Mumbai) having its
address at B/1104, Siddhivinayak
Horizon, Veer Nariman Road,
Prabhadevi, Mumbai 400 025.

3. **DR JAGANNATH PRASAD
BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar
Bridge, Dahisar (West),
Mumbai 400 068. Executive member,
National Co-ordinator of Maharani
Ahilyadevi Samaj Prabodhan Manch
Maharashtra Rajya Mumbai,
Registered under Public Trusts Act
1950, Mumbai No. F-18219 (Mumbai)
having its address at B/1104,
Siddhivinayak Horizon, Veer Nariman
Road, Prabhadevi, Mumbai 400 025.

... **PETITIONERS**

~ **VERSUS** ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
23074467, Fax: 011-23070351
Email: prao.hrd@nic.in.
2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknaya Bhavan, Khan Market,
New Delhi 110 003.
Telephone No: 011-24646954.

3. **THE SECRETARY,**
Ministry of Law & Justice,
Govt of India, having its office at 4th
Floor, A-Wing, Shastri Bhawan,
New Delhi 110 001.
4. **THE REGISTRAR GENERAL AND
CENSUS COMMISSIONER OF
INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011.
Tel. Nos. +91-11-23070629, 23381623,
23381917, 23384816
Email: rgoffice.rgi@nic.in.
5. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
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Nariman Point, Mumbai 400 032.
6. **THE PRINCIPAL SECRETARY,**
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Government of Maharashtra,
1st Floor, Mantralaya (Extension
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Mumbai 400 032.
Phone: 022-22833665, 22048790
Email: tribal.info@maharashtra.gov.in.
7. **THE CHAIRMAN,**
Maharashtra State Scheduled Caste &
Scheduled Tribes Commission, Admn.
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Phone: 020-26332380, 020-26360941
Fax: 020-26360026,
Email: trti.mah@nic.in.

... **RESPONDENTS**

WITH
REVIEW PETITION (ST) NO. 2210 OF 2023
IN
CIVIL APPLICATION NO. 864 OF 2019
IN
WRIT PETITION NO. 4919 OF 2017

1. **ADIVASI SAMAJ KRUTI SAMITI,**
A trust registered under the provisions
of Maharashtra Public Trusts Act 1950,
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Chandrakant Lembhe, having its office
at 53/1-B, Vinayak Nagar, Ganpati
Chowk, Navi Sangvi, Pune 61.
2. **SAHYADRI ADIVASI JESHTA
NAGRIK SANGH, PUNE,**
having office at Survey No. 80/2/1,
Sudarshan Nagar, Pimple Gurav,
Pune 61.
3. **TRIBAL DOCTORS FORUM,**
Sai Prasad, Flat No. 1, Survey No. 70/1,
Samata Nagar, Navi Sangvi,
Pune 27.

... **PETITIONERS**

~ **IN THE MATTER BETWEEN~**

1. **MAHARANI AHILYADEVI SAMAJ PRABODHAN MANCH**
MAHARASHTRA RAJYA MUMBAI,
Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025 through its President Mr Madhukar Babarao Shinde.
2. **MURARJI ARJUN PANCHPOL-DHANGAR,**
H/19/404, Press Enclave CHS, Pratiksha Nagar, Sion (East), Mumbai 400 022.
General Secretary of: Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under Public Trusts Act 1950, Mumbai No. F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.
3. **JAGANNATH PRASAD BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar Bridge, Dahisar (West), Mumbai 400 068.
Executive Member, National Co-ordinator of Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.

... **PETITIONERS**

~ VERSUS ~

1. **THE UNION OF INDIA**,
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
23074467
Fax: 011-23070351.
2. **THE CHAIRPERSON**,
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003
Telephone No: 011-24646954.
3. **THE SECRETARY**,
Ministry of Law & Justice,
Govt of India, having its office at 4th
Floor, A-Wing, Shastri Bhawan,
New Delhi 110 001.
4. **THE REGISTRAR GENERAL AND
CENSUS COMMISSIONER OF
INDIA**,
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011.
Tel Nos: +91-11-23070629, 23381623,
23381917, 23384816.
5. **THE STATE OF MAHARASHTRA**,
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai 400 032.

6. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension
Building), Madam Cama Road,
Hutatma Rajguru Chock,
Mumbai 400 032.
Phone – 022-22833665, 22048790
7. **THE CHAIRMAN,**
Maharashtra State Scheduled Castes &
Scheduled Tribes Commission, Adam.
1 Building, AG Khan Road, Worli Sea
Face.
8. **THE COMMISSIONER,**
Tribal Research & Training Institute,
28, Queen's Garden, Pune 411 001.
Phone: 020-26332380, 020-26360941,
020-2633236.

... RESPONDENTS

WITH
REVIEW PETITION (ST) NO. 2211 OF 2023
IN
WRIT PETITION NO. 4919 OF 2017

**TRIBAL RIGHTS PROTECTION
COMMITTEE,**
Maharashtra State, having its contact office
at – Kashinath Nagar, Taloda, Tq. Taloda,
Dist. Nandurbar 425 413
through its Treasurer,
Mr Prakash Mirya Thakare,
Age-58 years, Occu: Social Worker

... REVIEW
PETITIONER

~ IN THE MATTER BETWEEN ~

1. **MAHARANI AHILYADEVI SAMAJ PRABODHAN MANCH**
MAHARASHTRA RAJYA MUMBAI,
Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025 through its President Mr Madhukar Babarao Shinde.
2. **MURARJI ARJUN PANCHPOL-DHANGAR,**
H/19/404, Press Enclave CHS, Pratiksha Nagar, Sion (East), Mumbai 400 022.
General Secretary of: Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.
3. **DR JAGANNATH PRASAD BAGHEL-DHANGAR,**
D 204, Pleasant Park, Near Dahisar Bridge, Dahisar (West), Mumbai 400 068.
Executive member, National Co-ordinator of Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya Mumbai, Registered under Public Trusts Act 1950, Mumbai No F-18219 (Mumbai) having its address at B/1104, Siddhivinayak Horizon, Veer Nariman Road, Prabhadevi, Mumbai 400 025.

... PETITIONERS

~ VERSUS ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi.
2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003.
3. **THE SECRETARY,**
Ministry of Law & Justice,
Govt of India, having its office at 4th
Floor, A-Wing, Shastri Bhawan,
New Delhi 110 001.
4. **THE REGISTRAR GENERAL AND
CENSUS COMMISSIONER OF
INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road, New Delhi 110
011.
5. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai 400 032.
6. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension
Building), Madam Cama Road, Hutatma
Rajguru Shock, Mumbai 400 032.

7. **THE CHAIRMAN,**
Maharashtra State Scheduled Castes &
Scheduled Tribes Commission, Admn.
Building, AG Khan Road, Worli Sea
Face, Mumbai 400 018.
8. **THE COMMISSIONER,**
Tribal Research & Training Institute,
28, Queen's Garden, Pune 411 001.

... **RESPONDENTS**

WITH

WRIT PETITION NO. 1694 OF 2018

ISHWAR BAPURAO THOMBARE-
"DHANGAR",
S/o Bapu Savlaram Thombare-
"DHANGAR"
Presently residing at WW1/4, Bajaj Vihar
Colony, Bajaj Auto Limited, Old Mumbai –
Pune Highway, Akurdi, Opp. Akurdi Post
Office, Akurdi,
Pune 411 035
also residing at R/o Khed BK,
Tal. Khandala, Dist. Satara, Maharashtra

... **PETITIONER**

~ VERSUS ~

1. **THE UNION OF INDIA,**
Through its Secretary, Ministry of
Tribal Affairs having its office at
Ground Floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001
Telephone Nos: 011-23389779,
23074467
Fax: 011-23070351
Email: prao.hrd@nic.in.

2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003
Telephone No: 011-24646954.
3. **THE STATE OF MAHARASHTRA,**
through Principal Secretary, Tribal
Development Department,
Government of Maharashtra,
1st Floor, Mantralaya, (Extension
Building), Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai 400 032.
Phone: 022-22833665, 22048790
email: tribal.info@maharashtra.gov.in
4. **THE DISTRICT MAGISTRATE-
SATARA,**
through its Sub-Divisional Officer- WAI
& Maan, Office of Sub-Divisional
Officer-WAI & Maan, District - Satara,
Maharashtra.

... RESPONDENTS

WITH
CIVIL APPLICATION NO. 866 OF 2019
IN
WRIT PETITION NO. 1694 OF 2018

**TRIBAL RIGHTS PROTECTION
COMMITTEE,**
Maharashtra State through its Secretary Suhas
Vechya Naik, Age 45 years, Occu.: Social
Worker, R/o Rampur, Post Modalpada, Tehsil
Taloda, District- Nandurbar

... INTERVENER
APPLICANT

~ IN THE MATTER BETWEEN~

ISHWAR BAPURAO THOMBARE-
“DHANGAR”,
S/o Bapu Savlaram Thombare-
“DHANGAR”
Presently residing at WW1/4, Bajaj Vihar
Colony, Bajaj Auto Limited, Old Mumbai –
Pune Highway, Akurdi, Opp. Akurdi Post
Office, Akurdi,
Pune 411 035
also residing at R/O Khed BK,
Tal. Khandal, Dist. Satara, Maharashtra

... **PETITIONER**

~ **VERSUS** ~

1. **THE UNION OF INDIA,**
Through its Secretary, Ministry of
Tribal Affairs having its office at
Ground Floor, ‘D’ wing, Shastri
Bhawan, New Delhi.
2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003.
Telephone No. 011-24646954
3. **THE STATE OF MAHARASHTRA,**
through Principal Secretary, Tribal
Development Department,
Government of Maharashtra,
1st Floor, Mantralaya, (Extension
Building), Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai 400 032.

... **RESPONDENTS**

WITH
WRIT PETITION NO. 1699 OF 2018

PURUSHOTTAM MADHUKAR
DAKHOLE,
S/o Shri Madhukarrao Dakhole
R/At Post Rohana, Tal Narkhed, District
Nagpur (Maharashtra), presently residing
at: C/o Mr Pandurang Maruti Dhaigude
Room No. 8 Satguru, Saibaba Society,
Church Road, Singh Estate, Kandivali East,
Mumbai 400101.

... PETITIONER

~ VERSUS ~

- 1. THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
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FAX: 011-23070351
Email Address: prao.hrd@nic.in
- 2. THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003
Telephone No. 011-24646954
- 3. THE STATE OF MAHARASHTRA,**
through Principal Secretary, Tribal
Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension

Building), Madam Cama Road,
Hutatma Rajguru Square,
Mumbai 400 032.
Phone: 022-22833665, 22048790
Email: tribal.info@Maharashtra.gov.in

4. **THE JOINT COMMISSIONER,**
Scheduled Tribe Certificate Scrutiny
Committee, Tribal Development
Bhavan, Giri Peth, Nagpur
(Maharashtra)

... RESPONDENTS

WITH
CIVIL APPLICATION NO. 867 OF 2019
IN
WRIT PETITION NO. 1699 OF 2018

**TRIBAL RIGHTS PROTECTION
COMMITTEE,**
Maharashtra State, through its Secretary,
Suhas Vechya Naik,
Age 45 years, Occu.-Social Worker,
R/o- Rampur, Post - Modalpada,
Tehsil-Taloda, District-Nandurbar

... INTERVENER
APPLICANT

~ IN THE MATTER BETWEEN ~

**PURUSHOTTAM MADHUKARRAO
DAKHOLE,**
S/o Shri Madhukarrao Dakhole
R/At Post Rohana, Tal Narkhed, District
Nagpur (Maharashtra), presently residing at:
C/o Mr Pandurang Maruti Dhaigude
Room No. 8 Satguru, Saibaba Society, Church
Road, Singh Estate, Kandivali East,
Mumbai 400101.

... PETITIONER

~ VERSUS ~

1. **THE UNION OF INDIA**,
through its Secretary, India, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' Wing, Shastri
Bhawan, New Delhi 110 001.
2. **THE CHAIRPERSON**,
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003.
3. **THE STATE OF MAHARASHTRA**,
through Principal Secretary, Tribal
Development Department,
Government of Maharashtra,
1st Floor, Mantralaya (Extension
Building), Madam Cama Road,
Hutatma Rajguru Square,
Mumbai 400 032.
4. **THE JOINT COMMISSIONER**,
Scheduled Tribe Certificate Scrutiny
Committee, Tribal Development
Bhavan, Giri Peth, Nagpur
(Maharashtra)

...RESPONDENTS

WITH

WRIT PETITION NO. 3945 OF 2023

**TRIBAL RIGHTS PROTECTION
COMMITTEE**,
Maharashtra State, having its contact office at -
Kashinath Nagar, Taloda, Tq. Taloda, Dist.
Nandurbar 425 413 through its Secretary, Mr
Suhas Vechya Naik

...PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through Chief Secretary, Mantralaya,
Mumbai 400 032.
2. **TRIBAL DEVELOPMENT
DEPARTMENT,**
through its Addl. Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
3. **TRIBAL ADVISORY COUNCIL,**
Maharashtra State, through its
Chairman (Chief Minister of
Maharashtra), Mantralaya,
Mumbai 400 032.
4. **TRIBAL RESEARCH AND
TRAINING INSTITUTE, MS,**
through its Commissioner, 28, Queens
Garden, Pune 411 001.
5. **UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs, Shastri Bhavan,
New Delhi 110 001.
6. **NATIONAL COMMISSION FOR
SCHEDULED TRIBES,**
through its Chairperson,
Loknayak Bhavan, Khan Market,
New Delhi 110 003.
7. **REGISTRAR GENERAL & CENSUS
COMMISSIONER OF INDIA,**
2/A Man Singh Road,
New Delhi 110 001.

... RESPONDENTS

WITH
WRIT PETITION NO. 2239 OF 2023

1. **ADIVASI SAMAJ KRUTI SAMITI,**
A trust under the provision of
Maharashtra Public Trusts Act 1950,
through its Secretary, Satish
Chandrakant Lembhe, having office at:
53/1-B, Vinayak Nagar, Ganpati
Chowk, Navi Sangvi, Pune 61.
2. **SAHYADRI ADIVASI JESHTA
NAGRIK SANGH PUNE,**
A Society registered under Maharashtra
Co-operative Societies Act 1960,
through its Secretary, Sudam Yashwant
Marade, having office at: Survey No.
80/2/2, Sudarshaan Nagar, Pimple
Gurav, Pune 61.
3. **TRIBAL DOCTORS FORUM,**
A Society registered under Maharashtra
Co-operative Societies Act, through its
President, Ramkrushna Digambar
Pedhekar, having office: Sai Prasad, Flat
No. 1, Survey No. 70/1, Samata Nagar,
Navi Sangvi, Pune 27.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through Chief Secretary/ Cabinet
Secretary, Mantralaya,
Mumbai 400 032.
2. **TRIBAL ADVISORY COUNCIL,**
Maharashtra State, through its
Chairman (Chief Minister of

Maharashtra), Mantralaya,
Mumbai 400 032.

3. **TRIBAL DEVELOPMENT DEPARTMENT,**
through its Principal Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
4. **UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs, Shastri Bhavan,
New Delhi 110 001.
5. **NATIONAL COMMISSION FOR SCHEDULED TRIBES,**
through its Chairperson,
Loknayak Bhavan, Khan Market,
New Delhi 110 003.
6. **REGISTRAR GENERAL & CENSUS COMMISSIONER OF INDIA,**
2/A Man Singh Road,
New Delhi 110 001.

... RESPONDENTS

WITH

PUBLIC INTEREST LITIGATION NO. 135 OF 2018

HEMANT B PATIL,
Age: 47 years, Occ: Business,
National President, Bharat Against
Corruption, residing at Prahar Residence,
Flat No. 10, Vidyanagar, Tingre Nagar,
Vishrantwadi, Pune 411 015.
Email: hemantpatil778@gmail.com
Mob. No. 9096812597
Aadhar Card No. 724270859622

... PETITIONER

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through Govt. Pleader,
High Court, Mumbai
2. **PRINCIPAL SECRETARY, STATE
OF Maharashtra,**
Mantralaya, Mumbai 400 032.
3. **SECRETARY OF DEPARTMENT OF
SOCIAL JUSTICE & WELFARE
FOR STATE OF MAHARASHTRA**
Manayalaya, Mumbai.
4. **SECRETARY OF DEPARTMENT OF
WELFARE OF SCHEDULED TRIBE
FOR STATE OF MAHARASHTRA.**

... RESPONDENTS

WITH

CIVIL APPLICATION NO. 31 OF 2019

IN

PUBLIC INTEREST LITIGATION NO. 135 OF 2018

**TRIBAL RIGHTS PROTECTION
COMMITTEE,**
Maharashtra State, through its its Secretary,
Suhas Vechya Naik
Age 45 years, Occu.- Social Worker,
R/o Rampur, Post-Modalpada, Tehsil-
Taloda, District-Nandurbar

... INTERVENER
APPLICANT

~ IN THE MATTER BETWEEN~

HEMANT B PATIL,
Age: 47 years, Occ: Business,
National President, Bharat Against
Corruption, residing at Prahar Residence,
Flat No. 10, Vidyanagar, Tingre Nagar,
Vishrantwadi, Pune 411 015.

...PETITIONER

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
through Govt. Pleader,
High Court, Mumbai
- 2. PRINCIPAL SECRETARY, STATE**
OF Maharashtra,
Mantralaya, Mumbai 400 032.
- 3. SECRETARY OF DEPARTMENT OF**
SOCIAL JUSTICE & WELFARE
FOR STATE OF MAHARASHTRA
Mantralaya, Mumbai.
- 4. SECRETARY OF DEPARTMENT OF**
WELFARE OF SCHEDULED TRIBE
FOR STATE OF MAHARASHTRA.

...RESPONDENTS

WITH

INTERIM APPLICATION NO. 18224 OF 2022

IN

REJECTED CASE NO. 1704 OF 2016

- 1. ADIVASI SAMAJ KRUTI SAMITI,**
through its President Mr Sitaram
Rakhma Joshi, 53/1B, Vinayak Nagar,
New Sangvi, Pune 411 061.

2. **KONKANA-KONKANI ADIVASI SAMAJ SEVA SANGH,**
through its President Mr Namdev Valu Bagul, Flat No. 1, Rajmauli Apartment, Age - 54, Mhasrul, Makhmalabad Link Road, Nashik 422 004.
3. **ADIVASI VIKAS V SURKSHA ASSOCIATION,**
through its President Mr Ravindra Umakant Talpe, 38/1/1-3-4, Jai Madati Raj Park, Pimpale Gurav, Pune - 411 061.
4. **TRIBAL RIGHTS PROTECTION COMMITTEE, MAHARASHTRA STATE,**
through its Secretary Mr Suhas Vechya Naik, Ro. - Rampur, Post - Modalpada, Tehsil - Taloda, District-Nandurbar.

... APPLICANTS

~ IN THE MATTER BETWEEN~

1. **ADIVASI SAMAJ KRUTI SAMITI,**
through its President Mr Sitaram Rakhma Joshi, 53/1B, Vinayak Nagar, New Sangvi, Pune 411 061.
2. **KONKANA-KONKANI ADIVASI SAMAJ SEVA SANGH,**
through its President Mr Namdev Valu Bagul, Flat No. 1, Rajmauli Apartment, Age - 54, Mhasrul, Makhmalabad Link Road, Nashik 422 004.
3. **ADIVASI VIKAS V SURKSHA ASSOCIATION,**
through its President Mr Ravindra Umakant Talpe, 38/1/1-3-4, Jai Madati Raj Park, Pimpale Gurav, Pune 411 061.

4. **TRIBAL RIGHTS PROTECTION COMMITTEE, MAHARASHTRA STATE,**
through its Secretary Mr Suhas Vechya
Naik, R/o. - Rampur, Post -
Modalpada, Tehsil - Taloda,
District-Nandurbar.

... **PETITIONERS**

~ **VERSUS** ~

1. **STATE OF MAHARASHTRA,**
through Chief Secretary, Mantralaya,
Mumbai 400 032.
Maharashtra.
2. **TRIBAL DEVELOPMENT DEPARTMENT,**
through its Addl. Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400 032,
Maharashtra.
3. **TRIBAL ADVISORY COUNCIL,**
Maharashtra State, through its
Chairman (Chief Minister of
Maharashtra), Mantralaya,
Mumbai 400 032, Maharashtra.
4. **TRIBAL RESEARCH AND TRAINING INSTITUTE, MS,**
through its Commissioner, 28, Queens
Garden, Pune 411 001, Maharashtra.
5. **UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs, Shastri Bhavan,
New Delhi 110 001.
6. **NATIONAL COMMISSION FOR SCHEDULED TRIBES,**

through its Chairperson,
Loknayak Bhavan, Khan Market,
New Delhi 110 003.

**7. REGISTRAR GENERAL & CENSUS
COMMISSIONER OF INDIA,
2/A Man Singh Road,
New Delhi 110 001.**

...RESPONDENTS

**WITH
TRANSFER MATTER (ST) NO. 30637 OF 2023
IN
REVIEW APPLICATION (ST) NO. 20784 OF 2023
IN
WRIT PETITION NO. 2086 OF 1997
(AURANGABAD)**

RUSHIKESH VASANT SHELKE,
Age 18 years, Occu: Student,
R/o Village Kille Dharur, Tal. - Dharur,
Dist-Beed, presently residing at Govt ITI
Hostel, Pandharpur, Tal-Pandharpur,
District-Solapur

...PETITIONER

~ IN THE MATTER BETWEEN~

GOVIND S/O NILKANTRAO KUKADE,
Age: 25 Yrs, Occ: Engineer,
R/o Malewadi, Tal-Gangakhed,
District - Parbhani

**...ORIGINAL
PETITIONER**

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Copy to be served on Govt. Pleader,
High Court Bench, Aurangabad.
2. **MAHARASHTRA PUBLIC
SERVICE COMMISSION,**
Bank of India Building, Fort, Mumbai,
through it's Secretary.
3. **THE MAHARASHTRA
ELECTRICITY BOARD,**
Prakashgad, Bandra, through its
Member Secretary.
4. **THE TALUKA EXECUTIVE
MAGISTRATE AND TEHSILDAR,**
Gangakhed, District - Parbhani.

... **RESPONDENTS**

WITH
INTERIM APPLICATION NO. 17021 OF 2023
IN
TRANSFER MATTER (ST) NO. 30637 OF 2023
IN
REVIEW APPLICATION (ST) NO. 20784 OF 2023
IN
WRIT PETITION NO. 2086 OF 1997
(AURANGABAD)

RUSHIKESH VASANT SHELKE,
Age 18 years, Occu: Student,
R/o Village Kille Dharur, Tal. - Dharur,
Dist-Beed, presently residing at Govt ITI
Hostel, Pandharpur, Tal-Pandharpur,
District-Solapur

... **APPLICANT**

~ IN THE MATTER BETWEEN~

GOVIND S/O NILKANTRAO KUKADE,
Age: 25 Yrs, Occ: Engineer,
R/o Malewadi, Tal-Gangakhed,
District - Parbhani

... ORIGINAL
PETITIONER

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Copy to be served on Govt. Pleader,
High Court Bench, Aurangabad.
2. **MAHARASHTRA PUBLIC
SERVICE COMMISSION,**
Bank of India Building, Fort, Mumbai,
through it's Secretary.
3. **THE MAHARASHTRA
ELECTRICITY BOARD,**
Prakashgad, Bandra, through its
Member Secretary.
4. **THE TALUKA EXECUTIVE
MAGISTRATE AND TEHSILDAR,**
Gangakhed, District - Parbhani.

... RESPONDENTS

WITH
TRANSFER MATTER (ST) NO. 30642 OF 2023
IN
REVIEW APPLICATION (ST) NO. 20795 OF 2023
IN
WRIT PETITION NO. 1071 OF 1987
(AURANGABAD)

RUSHIKESH VASANT SHELKE,
Age 18 years, Occu: Student,
R/o Village Kille Dharur, Tal. - Dharur,
Dist-Beed, presently residing at Govt ITI
Hostel, Pandharpur, Tal-Pandharpur,
DISTRICT-SOLAPUR

... PETITIONER

~ IN THE MATTER BETWEEN~

**PRAKASH PRABHURAO ALIAS
PRABHAKARRAO KOKANE,**
Age 25 years, Occu: Service,
R/o Aurangabad

**... ORIGINAL
PETITIONER**

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
through its Secretary, Social Welfare,
Cultural, Sports and Tourism
Department, Mantralaya, Mumbai
- 2. THE UNION OF INDIA,**
through it's Secretary, Social Welfare
Department, Street-3, Church Road,
Pune.
- 3. THE DIRECTOR OF SOCIAL
WELFARE DEPARTMENT,**
Maharashtra State, 3, Churha Road,
Pune.
- 4. THE EXECUTIVE MAGISTRATE,**
Degloor, District - Nanded.

... RESPONDENTS

WITH
INTERIM APPLICATION NO. 17022 OF 2023
IN
TRANSFER MATTER (ST) NO. 30642 OF 2023
IN
REVIEW APPLICATION (ST) NO. 20795 OF 2023
IN
WRIT PETITION NO. 1071 OF 1987
(AURANGABAD)

RUSHIKESH VASANT SHELKE,
Age 18 years, Occu: Student,
R/o Village Kille Dharur, Tal. - Dharur,
Dist-Beed, presently residing at Govt ITI
Hostel, Pandharpur, Tal-Pandharpur,
District-Solapur

... APPLICANT

~ IN THE MATTER BETWEEN~

**PRAKASH PRABHURAO ALIAS
PRABHAKARRAO KOKANE,**
Age 25 years, Occu: Service, R/o
Aurangabad

... ORIGINAL
PETITIONER

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
through its Secretary, Social Welfare,
Cultural, Sports and Tourism
Department, Mantralaya, Mumbai
- 2. THE UNION OF INDIA,**
through it's Secretary, Social Welfare
Department, Street-3, Church Road,
Pune.

3. **THE DIRECTOR OF SOCIAL WELFARE DEPARTMENT,**
Maharashtra State, 3, Church Road,
Pune.
4. **THE EXECUTIVE MAGISTRATE,**
Degloor, District – Nanded.

... RESPONDENTS

WITH

WRIT PETITION NO. 15423 OF 2023

PRASAHANT S/O PRABHU KOKANE,
Age- 40 years, Occupation: Advocate &
Education, R/o. Flat No. 104, Suman
Heights, Farande Nagar, Nanded,
District – Nanded,
Mb. 9421304868.

... PETITIONER

~ VERSUS ~

1. **THE UNION OF INDIA,**
through its Secretary, Ministry of
Tribal Affairs having its office at
Ground floor, 'D' wing, Shastri
Bhawan, New Delhi 110 001.
Telephone Nos: 011-23389779,
23074467,
FAX: 011-23070351
Email Address: prao.hrd@nic.in
2. **THE CHAIRPERSON,**
National Commissions for Scheduled
Tribes having its office at: 6th Floor, B-
Wing, Loknayak Bhavan, Khan Market,
New Delhi 110 003
Telephone No. 011-24646854

3. **THE REGISTRAR GENERAL AND
CENSUS COMMISSIONER OF
INDIA,**
(Ministry of Home Affairs),
2/A Man Singh Road,
New Delhi 110 011.
Tel. Nos. +91-11-230706229, 23381623.
E-mail-rgoffice.rgi@nic.in
4. **THE STATE OF MAHARASHTRA,**
through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Madam Cama Road,
Hutatma Rajgur Squar,
Nariman Point, Mumbai 400 032.
5. **THE PRINCIPAL SECRETARY,**
Tribal Development Department,
1st Floor, Mantralaya (Extension
Building), Mumbai 400 032.
Phone – 022-22833665, 22048790
Email-tribal.info@Maharashtra.gov.in
6. **THE CHAIRMAN,**
Maharashtra State Scheduled Tribes
Commission, Admn. Building, AG
Khan Road, Worli Sea Face, Mumbai
400 018.
7. **THE SUB-DIVISIONAL OFFICER,**
Sub-Division Office at Biloli,
District – Nanded.
8. **SCHEDULED TRIBE
CERTIFICATE SCRUTINY
COMMITTEE FOR CANOUGHT
PLACE CIDCO,**
Aurangabad
Email: tcscamr.mah@nic.in

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN
WP/4919/2017, CAW/865/2019, CAW/812/2019, CAW/864/2019, WP/1694/2018, CAW/866/2019, WP/1699/2018, CAW/867/2019, WP/3945/2023, WP/2239/2023, PIL/135/2018, XFERST/30637/2023 & XFERST/30642/203

Mr Darius Khambata, Senior Advocate, with Dr Abhinav Chandrachud, Kavisha Shah, Datta Mane, Anupam Dighe, Minal Pawar, Hrutvik Patil, Hamza Lakhani, Mehali Mehta, Udit Saxena, Nikhat Chaudhary, Riz Khan, Sauresh Shetye & Jayesh Bhosle i/b India Law Alliance.

FOR THE APPLICANT/PETITIONER IN
WP/1071/1997, XFERST/30642/2023, CAST/17022/2023 & RPST/20795/2023.

Mr Darius Khambata, Senior Advocate, with Dr Abhinav Chandrachud, Kavisha Shah, Datta Mane, Anupam Dighe, Minal Pawar, Hamza Lakhani, Mehali Mehta, Hrutvik Patil, Udit Saxena, Nikhat Chaudhary, Riz Khan, Sauresh Shetye & Jayesh Bhosle, i/b India Law Alliance.

FOR THE APPLICANT/PETITIONER IN
WP/1071/1997, XFERST/30642/2023, CAST/17022/2023 & RPST/20795/2023.

Mr Darius Khambata, Senior Advocate, with Dr Abhinav Chandrachud, Kavisha Shah, Datta Mane, Hamza Lakhani, Hrutvik Patil, Nikhat Chaudhary & Riz Khan, i/b Jitendra Patil.

FOR THE PETITIONER IN
WP/3945/2023

Mr Anil Anturkar, Senior Advocate, with Nitin V Gangal, Siddheshwar Biradar, Prerna Shukla, Atharva D, D

Shinde & Prapti K.

**FOR INTERVENOR IN
CA/812/2019**

Mr Ram Apte, Senior Advocate,
*with Sudhama Bedekar &
Apurva Kulkarni, i/b Gargi
Uday Warunjikar.*

**FOR THE PETITIONER IN
PIL/135/2018.**

Mrs Priyandra Patil Sontakke,
with Siddheshwar A Patil.

**FOR THE APPLICANT/
PETITIONER IN
IA/18224/2022 IN
RC/1704/2018**

**Mr Ravindra Adsure, with Yash
Sonavane & Anuj Tiwari, i/b
Vivek Salunke.**

**FOR THE PETITIONER IN
WP/2239/2023,
RPIAST/2210/2023 &
APPLICANT IN
CAW/864/2019.**

**Mr Uday Warunjikar, with Sumit
Kate, Siddhesh Pilankar,
Sonali Chavan, Aditya
Khurkar & Jenish Jain.**

**PETITIONER IN PERSON
IN WP/15423/2023**

Mr Prashant P Konane.

**FOR THE RESPONDENT
UOI IN ALL MATTERS**

**Mr Devang Vyas, Additional
Solicitor General, with
Savita Ganoo, Parag Vyas &
Karuna Yadav, i/b DP Singh.**

**FOR THE RESPONDENT
STATE IN WP/4919/2017,
CAW/865/2019,
CAW/812/2019,
CAW/864/2019,
RPWST/2211/2023,
WP/1694/2018,
CAW/866/2019,
WP/1699/2018,
CAW/867/2019,
RPIAST/2210/2023,
WP/3945/2023,
WP/2239/2023,**

**Mr AA Kumbhakoni, Senior
Advocate (Special
Counsel), with Mr PP
Kakade, GP, Mr Akshay Sinde,
B Panel Counsel, Mr BV
Samant, Addl. GP & Mr YD
Patil, AGP & Jitendra P Patil,
AGP.**

**PIL/135/2018,
RC/1704/2016,
XFERST/30637/2023,
IA/17021/2023,
XFERST/30642/2023,
IA/17022/2023,
CAI/31/2019,
PIL/135/2018 &
IA/18224/2022.**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 16th February 2024

ORAL JUDGMENT (Per GS Patel J):-

1. The public law question in these matters goes beyond jurisprudence and constitutional principles, although the question is certainly rooted in those. As we shall presently see, the question has a wide social and undeniable political impact.

2. The lead Petition before us is Writ Petition No 4919 of 2017. The 1st Petitioner is the Maharani Ahilyadevi Samaj Prabodhan Manch Maharashtra Rajya, Mumbai a public charitable trust. The other two Petitioners are individuals. The Respondents to this Petition are the Union of India, the National Commission for Scheduled Tribes, the Ministry of Law and Justice of the Union of India, the Ministry of Home Affairs through the Census Department, the State of Maharashtra, the Tribal Development Department of the State of Maharashtra, the Maharashtra State

Scheduled Casts and Scheduled Tribe Commission and the Commissioner of the Tribal Research and Training Institute in Pune. Even in this Writ Petition, there are Civil Applications. One of these is by the Adivasi Samaj Kruti Samiti. Another is by the Tribal Rights Protection Committee. A third is by the Vanvasi Kalyan Ashram based in Nashik.

3. Then there is a Review Petition filed by the Adivasi Samaj Kruti Samiti and the Sahyadri Adivasi Jeshta Nagrik Sangh, Pune along with the Tribal Doctors Forum. Another Review Petition is filed by the Tribal Rights Protection Committee.

4. Writ Petition No 1694 of 2018 is by an individual, Ishwar Bapurao Thombare. In this too, there is a Civil Application for intervention by the Tribal Rights Protection Committee. Another Writ Petition No 1699 of 2018 is by another individual in which too the Tribal Rights Protection Committee has sought to intervene. Writ Petition No 3945 of 2023 is by the Tribal Rights Protection Committee and Writ Petition No 2239 of 2023 is by the Adivasi Samaj Kruti Samiti. There is also a Public Interest Litigation No 135 of 2018 filed by an individual, one Hemant Patil. In this as well there is an Interim Application with four Applicants, viz., the Adivasi Samaj Kruti Samiti, the Konkana-Konkani Adivasi Samaj Seva Sangh, the Adivasi Vikas va Suraksha Association and the Tribal Rights Protection Committee. There are transferred matters from Aurangabad such as Writ Petition No 2086 of 1997 and Transfer Matter (St) No 30637 of 2023 in a Review Petition filed by Rushikesh Vasant Shelke. The original Writ Petitioner was one

Prakash Kokane. There is an Interim Application there filed by Rushikesh and finally, there is Writ Petition No 15423 of 2023 filed by Prashant Kokane.

5. The individual reliefs in each of these matters will be briefly summarised a little later. But the essence of the controversy relates to a Presidential Order of 1956 and an Entry at Item 36. There is also a reference to Item 36 in an amendment of 1976.

6. The 1956 Entry includes the community 'Dhangad'. The case of the Petitioner (that is the Maharani Ahilyadevi Samaj Prabodhan Manch and others who support it) is that the community 'Dhangad' was not in existence in Maharashtra or even in India in 1956. The Entry was intended to be a reference to 'Dhangar'. The immediate question would therefore be whether there was ever a tribe known as *Dhangad* at the relevant time and, if so, was it distinct from *Dhangar*.

7. Now this is by no means the first case of its kind, as we shall presently see. The reason this assumes importance is that in Maharashtra, the Dhangar community enjoys affirmative action protection as a Nomadic Tribe (C) or NT(C) with a percentage reservation of 3.5%. The Dhangad community (and we use this as a more neutral term rather than caste or tribe because, as the record shows us, Dhangad is sometimes called a tribe and sometimes a caste in various parts of the country) is wrapped into a 7% Scheduled Tribe ("ST") reservation.

8. Statistically, the absolute numbers, though they may not be immediately relevant, will tell their own story. The Dhangar NT (C) population is estimated at about approximately 1.5 crores capita. This means that the 3.5% reservation as NT (C) is applicable to this population. If included in the ST reservation (of which the Dhangad community is a component), that affirmative action benefit immediately doubles to 7%. This has obvious ramifications in almost every segment of public life from education to employment and, importantly for our purposes in 2024, elections.

9. Mr Khambata and Dr Chandrachud have canvassed an argument that the Presidential Order of 1956 can legitimately be, as they say, “interpreted” by a Court in exercise of its jurisdiction under Article 226 of the Constitution of India. To be sure, it is not open to judicial review. That is not their submission. The argument is that such a Presidential Order is a special species of legislation. It cannot admit of ambiguity. It cannot also be left in a state of uncertainty or in a vacuum. Some meaning must be given to every entry in such a Presidential Order.

10. The fundamental premise is contested by their opponents. The lead opposition is by Mr Anturkar. He is joined in his submission by Dr Warunjikar and Mr Gangal. Their argument is that except in one extremely exceptional case that lies at the very margins of our jurisprudence, it is entirely impermissible for a Court to embark on any such exercise, whether it is termed as interpretation or otherwise.

11. Perhaps the most interesting role in all this is that of the State Government. Over the course of three or four Affidavits, it has said quite a lot without saying very much at all. This is perhaps the reason why in oral arguments, Mr Kumbhakoni was persuaded simply to wish each side 'the very best of luck' but was unable to take an unequivocal position himself.

12. To avoid all controversy, we first proceed to the reliefs in each application and petition.

13. Writ Petition No 4919 of 2017 by the Maharani Ahilyadevi Samaj Prabodhan Manch and others seeks the following reliefs:

- (a) for a Writ of Mandamus or an appropriate direction commending the Respondents not to infringe the Constitutional rights of the Dhangar Tribe which, the prayer says, "ought to be enshrined in the Presidential Order on account of error and mistake of facts apparent on the face of the record" pertaining to the non-existing Dhangad Tribe in the State of Maharashtra. This prayer actually encapsulates almost the entirety of the controversy before us.
- (b) The second prayer is inconsequential because it asks for a direction to investigate the issue of a non-existent Dhangad Tribe. This will not survive because no question of an investigation arises whatever the outcome of the Petition.
- (c) The third relief is to decide pending representations of 2015 and 2016. This prayer is now infructuous.

14. Civil Application No 865 of 2019 by the Tribal Rights Protection Committee seeks intervention in the Maharani Ahilyadevi Samaj Prabodhan Manch Writ Petition. The Interim Application proceeds on the basis that the Writ Petition ought to be dismissed because the two communities (again using the word neutrally) Dhangar and Dhangad are indeed distinct. There have been previous several attempts to conflate the two. This is yet another attempt in the same direction.

15. Civil Application No 812 of 2019 by the Vanvasi Kalyan Ashram is also for intervention. It also opposes the claim by the Maharani Ahilyadevi Samaj Prabodhan Manch.

16. Review Petition (Stamp) No 2210 of 2023 is filed in Civil Application No 864 of 2019. That Civil Application was by the Adivasi Samaj Kruti Samiti. This group also opposes the Writ Petitioner, viz., the Maharani Ahilyadevi Samaj Prabodhan Manch. Review Petition No 2210 of 2023 is akin to Review Petition No 2211 of 2023 filed by the Tribal Rights Protection Committee in the Maharani Ahilyadevi Samaj Prabodhan Manch Writ Petition. The reviews arise in a very interesting set of circumstances.

17. The review sought is of an order of 9th January 2023. To cut a very long story short, what happened was that the State Government commissioned the Tata Institute of Social Sciences (“TISS”) to make a report on the existence or non-existence of the Dhangad community in Maharashtra. That report was made and was submitted to the State Government. That report was not

disclosed in these proceedings. Instead, the State Government filed an Interim Application claiming 'privilege' and seeking exemption from disclosure. In an utterly bizarre turn of events, the Petitioners, i.e., the Maharani Ahilyadevi Samaj Prabodhan Manch and others *accepted* that application for privilege and, without a reasoned order, the State Government was afforded the relief that it sought, viz., an exemption from disclosure. What the State Government did thereafter was even more curious. Having claimed and obtained exemption from disclosure on the ground of privilege, it then proceeded in its Affidavits to selectively refer to portions of that privileged report on Affidavit. This has come in for criticism from all quarters. The Review Petition thus seeks, on grounds that we are unable to discern, that the 9th January 2023 consent order granting privilege should be reversed. We are doing nothing of the kind and that will be the end of both Review Petitions at the forefront. This is of course not the only assault on the 9th January 2023 order, but all will suffer the same fate.

18. Writ Petition No 1694 of 2018 by Ishwar Bapurao Thombare is one that on various grounds seeks substantially the same relief as the main Writ Petition by the Maharani Ahilyadevi Samaj Prabodhan Manch. Here the challenge is to a particular order dated 26th December 2017. The directions sought are to correct the caste certificate so that the Dhangar entry is read as Dhangad. This Petition is of course of tangential consequences. The Tribal Rights Committee has filed Civil Application No 866 of 2019 for intervention in Ishwar Bapurao Thombare's Petition, opposing it.

19. Writ Petition No 1699 of 2018 is by Purushottam Madhukar Dakhole. Here the Petitioner claims to have been victimised due to non-issuance of a Dhangad Tribe caste certificate. The prayer is in relation to an impugned order of 31st March 2017 and seeks the issuance of a caste certificate of the Dhangad Scheduled Tribe by correcting what is described as a “spelling mistake”. The Tribal Rights Protection Committee again opposes this with a Civil Application No 867 of 2019.

20. This takes us to Writ Petition No 3945 of 2023. This is the principal Petition argued by Mr Anturkar. Prayer clause (b) of this Writ Petition seeks an appropriate order to the authorities concerned to “strictly interpret” Entry No 36 of the Constitution (Scheduled Tribes) Order 1950 without, and we are now quoting, “any tinkering, addition, alteration, substitution” and to not treat the Dhangar community in Maharashtra as covered by Entry No 36 (Dhangad). The next prayer is for an injunction prohibiting the authorities from treating the Dhangar community as covered by Entry No 36 which includes the word Dhangad. Then there is a prayer for disclosure of the TISS report followed by interim reliefs.

21. Public Interest Litigation No 135 of 2018 is by an individual, one Hemant Patil. His prayer at page 10 of the Petition though worded as a certiorari is apparently for a mandamus to direct Respondents Nos 1 to 4, viz., the State of Maharashtra through its various departments to “take a decision” in respect of reservation of Dhangar community in the ST category instead of the NT category. This representation by Patil is of 12th July 2016 and he claims that it

is in the public interest that be done. The next prayer in the Public Interest Litigation is somewhat difficult to understand because a direction is sought to the Respondents to issue caste certificates to the Dhangar community (generally) in the ST category rather than the NT category. Nobody questions the locus of Hemant Patil in seeking such a relief. We have therefore not addressed that aspect of the matter. We will take the Public Interest Litigation, one that is tagged with the other matters and is assigned to this Court, on merits.

22. Thus, the three main contested Petitions are the ones by the Maharani Ahilyadevi Samaj Prabodhan Manch Petition, the Tribal Rights Protection Committee Petition and the Public Interest Litigation.

23. Writ Petition No 2239 of 2023 by the Adivasi Samaj Kruti Samiti and others is, broadly stated, also apparently in opposition to the case of the Maharani Ahilyadevi Samaj Prabodhan Manch and the Public Interest Litigation Petitioner. This is apparent from prayer clause (d) of Writ Petition No 2239 of 2023 which seeks a direction prohibiting the Respondents from including the Dhangar community in Maharashtra as a Scheduled Tribe in the Schedule to the Constitution (Scheduled Tribes) Order of 1950.

24. The redoubtable Tribal Rights Protection Committee has filed a Civil Application No 31 of 2019 in the Public Interest Litigation. Its stand is now known. Interim Application No 18224 of 2022 is in a Rejected Case No 1074 of 2016. This is for restoration of

a Writ Petition. That may be entirely unnecessary. It is included here for completeness.

25. We come to the two transferred matters from Aurangabad. Transfer Matter (Stamp) No 30637 of 2023 is actually a Review Petition seeking a review of an order dated 27th June 1997 in Writ Petition No 2086 of 1997. A copy of that judgment is at page 21. It is in the case of *Govind Nilkanthrao Kukade v State of the Maharashtra*.¹ The canvass of this Petition is fully covered by the principal Petition argued by Mr Khambata. No additional grounds are necessary. If the main Petition succeeds, then obviously the Review Petition will also succeed. Similarly, Transferred Matter (Stamp) No 30642 of 2023 by one Rushikesh Vasant Shelke seeks a review of an order of 15th March 2000 in Writ Petition No 1071 of 1987. A copy of that order is at page 22. This is in fact the judgment of *Prakash Prabhurao Kokane v State of Maharashtra & Ors*.² This judgment also has been discussed before us and we will be considering it shortly.

26. Interim Application No 17022 of 2023 in the Shelke Petition need not detain us much further.

27. Finally, there is Writ Petition No 15423 of 2023 also transferred from Aurangabad. This seeks a writ against the Respondents to issue a certificate to the Petitioner, and now this is exceedingly peculiar, of a Scheduled Tribe called “Dhangad/Dhangar/धनगर” community as listed in Sr No 36 of the

1 WP 2086 of 1997, decided on 27th June 1997.

2 2000 SCC OnLine Bom 158.

Constitution (Scheduled Tribes) Order 1950 as amended in 1976. The second prayer sought is for a declaration that the inclusion of Dhangar in the Nomadic Tribe category is unconstitutional as it is not applicable to persons such as the Petitioner belonging to the “Dhangad/Dhangar/ धनगर” community.

28. Thus are the battle lines drawn. For convenience, we will refer to Petitioners in the Maharani Ahilyadevi Samaj Prabodhan Manch and the PIL Petitioner compendiously as ‘Petitioners’ along with others who are seeking similar reliefs and to everybody else as the Respondents.

29. To better appreciate the constitutional underpinnings of the dispute, we turn first to Articles 341 and 342 of the Constitution of India. These two Articles are specially placed in Part XVI of the Constitution. This Part deals with special provisions relating to certain classes. To put this at the broadest level, Part III of the Constitution allows the state to take what is often called affirmative action. Certain communities (again we are using the word neutrally) are granted special protections, advantages, and entitlements. These take many forms. The most commonly known is ‘reservation’, but there may be other manifestations as well. For instance, allowing for a lower bar of required marks or percentages for passing examinations, relaxed age limits, and so on. There is a vast body of learning about reservations that are, as they say, horizontal and vertical and what happens to the intersectionality of these., That is not our immediate concern today.

30. An even broader principle is that to meaningfully afford a constitutional Part III protection to any particular class, community or societal segment, it is undoubtedly necessary that the class be identified. Otherwise, it would be impossible to know to whom these privileges are to be afforded. This is why Part XVI speaks of ‘special provisions’ and ‘certain classes’. Article 330 for instance speaks of reservation of seats for Scheduled Caste and Scheduled Tribes in the House of the People.

31. Scheduled Castes and Scheduled Tribes are, respectively, the subjects of Articles 341 and 342 of the Constitution of India. The two Articles read:

“341. Scheduled Castes—

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

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

342. Scheduled Tribes—

(1) **The President** may with respect to any State or Union territory, and where it is a State, after consultation with the Governor, thereof, by public

notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

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

(Emphasis added)

32. There is also Article 342-A added in 2018 by the 102nd Amendment to the Constitution. That will not concern us.

33. Any reading of Articles 341 and 342 of the Constitution reveals two fundamental precepts. The first is that the legislative power is vested exclusively in the President. No other entity has the Constitutional power to make any such list. The second is that it is only Parliament that can include or exclude an entry from the Presidential list.

34. But let us consider for the moment the nature of this legislation under Articles 341 and 342. That there is a consultative process with the State or the Union Territory and consultation with the Governor is not contentious. That a public notification is required is equally beyond controversy. But the notification that is spoken of will, under Article 341, specify the caste, races or tribes or

parts of groups within caste races or tribes; and these for the purposes of the Constitution of India are to be Scheduled Castes in relation to that State or Union Territory. Article 341(2) then says that Parliament may by law include or exclude from this list of Scheduled Castes, i.e., the one specified in Notification under Article 341(1), any caste, race or tribe or part of or group within caste, race, or tribe. But the important words are, that except as aforesaid, that Notification by the President cannot be varied by any subsequent Notification. Identical provisions are made for Scheduled Tribes in Article 342.

35. These are, by their very nature, an extremely unusual species of legislation. That it is legislation is not in doubt. But most legislations will, of necessity, prescribe obligations, duties, rights, offences, punishments, and so on. Such everyday legislations do not necessarily confine themselves to a factual scenario as currently exists but endeavour to regulate and control societal actions for the present and in future. These legislations range across a range of fields from crime to corporate securities law to motor vehicles and almost everything in between.

36. The legislation under Articles 341 and 342 is not prescriptive of permissible actions, obligations, or duties. What the Presidential Notification or Order does is to *state a factual situation as it stands on that date*. It is for this reason that the Presidential Order has a consultative provision. There is embedded within the Articles the incontrovertible position that the Presidential Notification or Order sets out what, according to that Order was the precise factual

situation regarding caste, race, tribes, or groups as on the date of that Order. This is not a matter of defining societal entitlements and obligations. It is a matter of defining and stating what exists. Consequently, there is no question of a Presidential Order under Articles 341 or 342 being susceptible to any form of judicial review or being assessed against Article 14 or having its vires challenged. There is simply no vires to challenge. They never can be. There is no question of arbitrariness, proportionality, fairness in action or anything of the kind regarding a Presidential Order under Articles 341 or 342. It is, very peculiarly, a non-prescriptive law that simply states an existing position.

37. We are concerned first here with the Constitution (Scheduled Tribes) Order of 6th September 1950. In the Ahilyadevi Petition, there is a passing reference to this 1950 Presidential Order. In the Petition that was filed by the Tribal Rights Protection Committee, a copy of this Order is at page 66. Typically, the Order runs into several pages and has different parts. At that time, the State of Maharashtra had not yet been formed and there was the far more expansive State of Bombay. The Order lists tribes, area by area.

38. Mr Khambata for the Petitioner puts the case like this. On 29th October 1956 there was a Notification called the 'Scheduled Castes and Scheduled Tribes Lists (Modification) Order 1956'. This was just about the time or just after the States Reorganisation Act of 1956. Parliament modified the Constitution (Scheduled Castes) Order 1950 to the extent specified in Schedule I of the 1956 Modification Order. This Notification has not only several

schedules but several parts in every schedule with geographical distributions. At page 338, as part of Schedule III and specifically in Part IV we find entries for the erstwhile State of Bombay. The first entry states that it is applicable throughout the State of Bombay except certain districts such as Buldhana, Akola, Amravati, Yavatmal, Wardha, Nagpur, Bhandara, Chanda, Aurangabad, Parbhani, Nanded, Beed, Osmanabad, Madhya Saurashtra and so on. Then, the entry in Sr No 7 is in regard to the Melghat Tehsil of Amravati District, Gadchiroli and Sironcha Tehsils of Chanda District and the Kelapur, Wani and Yavatmal Tahsils of Yavatmal District. There are sub-entries 1 to 31. Entry 27 says “*Oraon including Dhanka or Dhangad*”.

39. Mr Khambata’s next port of call is several decades later. It is the Scheduled Caste and Scheduled Tribes Order (Amendment) Act of 1976. This again had similar Schedules. By this time, the State of Maharashtra had been formed and Part IX of the Second Schedule to the 1976 Order dealt with the now-formed State of Maharashtra. Item 36 of this part had the following entry: “*Oraon, Dhangad*”.

40. What is the Petitioners’ case? It is simply this: that from 1950 through 1956 and to 1976, there was in what is now the State of Maharashtra, *not a single Dhangad*. There were *only* Dhangars. There is one solitary family of which the Petitioners are obviously acutely aware. This is the Khillare family (and some associates of that Khillare family) all of whom obtained certificates as *Dhangads* but which they have now disavowed. We will turn to that disavowal

shortly. It will prove to be pivotal. But, and this is the jurisprudential point, the submission by Mr Khambata and Dr Chandrachud is that if there was never a single Dhangad in the Presidential Orders or the amending notifications, that is to say, statistically and factually there was not a single person who was a Dhangad, then the Presidential Order by this very nature would remain an empty vessel, something *in vacuo*, referring to a nothingness. That, they submit, is impossible and no Writ Court could ever countenance legislation under Articles 341 or 342 being even in the slightest part an emptiness. In that situation, Mr Khambata submits, it is not only permissible, but it is indeed the duty of the Writ Court to step in and to, as it were, fill the void so that the Presidential Order receives its legitimate meaning and weight.

41. Mr Khambata states that this is by no means the first time that the judiciary has encountered such a problem. There is a direct answer for such a situation, he submits, and we should find this in the Constitutional five Judge Bench decision of the Supreme Court itself in the celebrated case of *B Basavalingappa v D Munichinnappa & Ors*.³ This decision is crucial to an assessment of Mr Khambata's case. We must ensure that there is no misunderstanding about the circumstances in which this case came to the Supreme Court or the considerations on which it is came to be decided in the manner in which it was decided.

42. We say this because it is common ground between the two sides that the kind of enquiry that Mr Khambata proposes is only

3 AIR 1965 SC 1269 : (1965) 1 SCR 316 : 1964 SCC OnLine SC 68.

permissible if the class is indeed zero, i.e., if there is no member of the class covered by the entry. To put it more specifically, Mr Khambata has, as it were, a foot in the jurisprudential door if he is able to show — and only if he is able to show — that there did not exist a single Dhangad at the time when the first Dhangad entry came to be made by the legislation in question; and that this position is undisputed. A single entry to the contrary, i.e., anything which would render it a non-zero class, would put the Petitioners out of Court.

43. Why would this be so? After all, it is perfectly legitimate to ask that a Court or some authority should surely be able to identify precisely which community was or was not included in a Presidential Order. The reason this is not permissible, apart from pronouncements of the Supreme Court, is suggested by Articles 341 and 342 themselves, because they limit the power to include or exclude communities by amendment solely to Parliament. As we have seen every single amendment is Parliamentary. Only Parliament has this right and sub-Article (2) of Articles 341 and 342 both make this abundantly clear. The structure therefore is that the Presidential Order sets out a non-prescriptive factual scenario regarding castes, tribes, races and groups and it is only Parliament that has the sovereign, non-justiciable power to include or exclude castes, tribes, etc., from this list.

44. *Basavalingappa* came before a Constitution Bench of the Supreme Court in exceedingly peculiar circumstances. Some of these will parallel the discussion before us today. But it requires to

be understood in context. *Basavalingappa* came up to the Supreme Court as an appeal by special leave against a judgment of the Mysore High Court in an election matter. That election was to the Bangalore South (Scheduled Castes) Constituency in February 1962. Four persons contested the election including the appellant, Basavalingappa, and the 1st respondent, Munichinnappa. Munichinnappa was declared elected having obtained the highest number of votes. Basavalingappa filed an election petition challenging Munichinnappa's election on diverse grounds. Before the Supreme Court only one ground was canvassed: that Munichinnappa was not a member of any of the Scheduled Castes mentioned in the Constitution (Scheduled Castes) Order 1950, which is, as we have seen, the principal originating order. Munichinnappa said that he belonged to a Scheduled Caste listed in the Presidential Order as 'Bhovi'. Basavalingappa disagreed. He said that Munichinnappa was a Voddar by caste, and Voddar was not a Scheduled Caste specified in the 1950 Order. Consequently, Munichinnappa was not eligible to stand for election from a Scheduled Caste constituency. The Election Tribunal held that Bhovi was a sub-caste within the Voddars but that only the sub-caste was included in the 1950 Presidential Order and not the entirety of the Voddar Caste. But the Tribunal also held that Munichinnappa did not in fact belong to the sub-caste of Bhovi. He was therefore held to be ineligible to offer himself for election from the Scheduled Caste Constituency. The Election Tribunal set aside the election and ordered a re-election. Munichinnappa appealed to the Mysore High Court. He claimed that he belonged to Scheduled Caste Bhovi mentioned in the Order and was therefore not ineligible. The High Court held that although the Voddar caste as such not included in

the 1950 Presidential Order, having regard to the facts and circumstances in existence of the time when the Order was passed, the Bhovi caste mentioned was *none other than the Voddar caste*. In other words, the Mysore High Court examined the ambit of the entry. On that basis, the High Court allowed Munichinnappa's appeal. It held that being a Voddar he "must be held" to be a member of the Bhovi caste. It dismissed the Election Petition. Basavalingappa obtained special leave and that is how the matter came before the Supreme Court.

45. Paragraph 3 of the decision notes the main contention on behalf of Basavalingappa. It ran like this: That a person was only entitled to offer himself election from the Scheduled Caste Constituency if he was a member of the caste specified in the Presidential Order. It was not open to anyone to say that, though not a member of a caste specified in the Order, he was a member of some other caste, and that other caste was included in the castes mentioned or specified in the Presidential Order. The submission went on that where a caste had more than one name, the Presidential Order specified the other names in brackets. Even where there were multiple spellings, various spellings were included. Since the caste Bhovi did not mention the caste Voddar in brackets, the Election Tribunal could not have taken evidence to test whether the Voddar caste was subsumed within or was none other than the Bhovi caste. Basavalingappa therefore said that the High Court was in error in looking into evidence that was led before the Election Tribunal and then concluding that the Bhovi caste mentioned in the Order was "meant for the caste Voddar". That evidence ought not to have been allowed by the Election Tribunal in

the first place. Had that evidence been excluded, Munichinnappa — a Voddar by caste — would have been rendered ineligible since Voddar was not mentioned in the 1950 Order.

46. The judgment then analysed Article 341 (since the issue related to a caste, not a tribe). The Supreme Court held that the object of Article 341(1) was obviously to avoid all disputes as to whether a particular caste was or was not a Scheduled Caste. Only those castes notified in the Presidential Order could be said to be Scheduled Castes. Sub-Article (2) then gave power to Parliament to include or exclude any caste, race or tribe or part of or group within any such caste, race or tribe in or from the list in the Presidential Order. Parliament thus had the power to modify the Presidential Order's listing — but *only* Parliament had that power. Further, the Supreme Court explained, a Presidential Order could not be varied by any subsequent notification except by a permissible Parliamentary modification. Subject to this legislative power of Parliament, the Presidential Order, once issued, was final.

47. The Supreme Court clearly held that Article 341 provides for a Presidential notification *and for its finality* except when altered by Parliament in law. This was Basavalingappa's submission: that the notification once made was final. It could not be revised even by the President. It could only be modified by Parliament by inclusion or exclusion. It was therefore contended that the Tribunal was entirely in error in letting in evidence to show that the Voddar caste was the same as the Bhovi caste, only the latter being mentioned in the Order and not the former; and the High Court was equally in error

when it proceeded on that evidence to hold that the two were the same.

48. We note for our purposes that there is no material distinction between Articles 341 and 342 although Article 341 when it speaks of Scheduled Castes also has a reference to a specification of the castes, races, tribes, or parts of these. Article 342 is a reference to tribes or tribal communities. The general principle however remains.

49. This brings us to the fulcrum of the Basavalingappa decision in paragraphs 6 and 7 of the AIR report. The Supreme Court said in paragraph 6 in the clearest possible terms that:

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

(Emphasis added)

50. As the emphasized portion shows, the two propositions accepted by the Supreme Court cannot lend themselves to further discourse. The Supreme Court set out the general proposition that it is not open to any person to lead evidence that caste (or tribe) *B* is part of caste (or tribe) *A* notified in the Order. It is for this reason that the Supreme Court said that *ordinarily* it would not have been open to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order because Voddar was not mentioned in brackets after the Bhovi caste in the Order.

51. As a thought experiment, let us substitute the word *Bhovi* with *Dhangad* and Voddar with *Dhangar*. The result from the Supreme Court decision in *Basavalingappa* is clear: it would not be possible to examine evidence to show that the two are the same.

52. But this immediately raised a logical problem. For there was one remaining possibility. Certainly, it was an outlier of a possibility, but it had to be addressed anyway. *What would happen if there was no caste known as Bhovi at all?* In other words: the only caste mentioned in the Presidential Order was literally a reference to nothing and to no one. In that situation (but only in that situation), was the taking of evidence possible?

53. It is to this that the Supreme Court directed its attention in paragraph 7 of *Basavalingappa*. It said that general observations in paragraph 6 did not and could not conclude the matter in the peculiar circumstances of the case before it. What were those peculiar circumstances? The Supreme Court explained:

“The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all.”

(Emphasis added)

54. This passage now sets out an exceedingly unique situation. These are the “peculiar” circumstances. *First*, that there was no caste known as Bhovi *at all*. A parallel to our case, for example, would be that there is *no tribe or community known as Dhangad at all* (which is the Petitioners’ construct). *Second*, that this zero-member situation existed before the States Reorganisation Act of 1956. The Supreme Court said in paragraph 7 that the Order refers to a Scheduled Caste known as Bhovi in Mysore State as it was *before 1956*. Consequently, it would have to be accepted that there was *some* caste that the President intended to include (after consultation, etc) when the Order mentioned the caste Bhovi as a Scheduled Caste. The Supreme Court specifically said that it *could not be accepted that the President included the caste Bhovi although there was no such caste at all in the State of Mysore as it existed before the States Reorganisation Act 1956*. In the same paragraph, the Supreme Court noted that *it was undisputed* that there was indeed no caste specifically known as Bhovi in the Mysore State *before 1956*. Therefore, the Supreme Court said, the only course open to courts was to ‘find out’ which caste the ‘entry Bhovi was intended to refer to’ and this could only be done by taking evidence.

55. To put this beyond the realm of all controversy, the Supreme Court noted in paragraph 7:

“If there was a caste known as Bhovi as such in Mysore State as it existed before 1956 evidence could not be given to prove that any other caste was included in the Bhovi caste but when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the order one has to determine which was the caste which was meant by that word on its inclusion in the Order.”

(Emphasis added)

56. The Supreme Court stated that this was the peculiar circumstance which necessitated the taking of evidence to determine which was the caste which was meant by the word Bhovi used in the Order when no caste was specifically known as Bhovi in the Mysore State before its Reorganisation of 1956. Consequently, and after a further discussion, the Supreme Court dismissed *Basavalingappa's* appeal.

57. For our purposes, the task before the Petitioners is clearly to show that their case lies within the limited confines of *Basavalingappa*. To make this abundantly clear, what must the Petitioners show? It is this: that as on date of the Presidential Order there was no community known as Dhangad at the time of the Presidential Order or the Amendment Order of 1956; in other words, that at least in the context of what is now the State of Maharashtra, that class from 1956 was a zero-member class. Only in those circumstances could a court enquire into the legislative intent behind the Presidential Order (without undertaking any form of judicial review).

58. Our discussion on *Basavalingappa* ends here; on the rest of it, there is the discussion of the evidence, the Supreme Court having held that it is in peculiar facts that evidence was indeed permissible.

59. How do the Petitioners go about establishing this? There is, as we shall presently see, and based on a very useful summary prepared by Dr Warunjikar, sufficient case law to indicate that arguments about the synonymy of words in a Presidential Order cannot be examined by a Writ Court. That part of the law is also not contentious. We can only express our profound admiration for the nimble footedness with which Mr Khambata sidesteps this by saying that he is not dealing with ‘synonymy’ but only a matter of *pronunciation*, or something that is lost if not in translation, then possibly in transliteration. But, as Mr Anturkar says, forensic dexterity and linguistic felicity apart, there is no substance to this submission, for it really amounts to saying that *Dhangar* and *Dhangad* are one and the same — and the reference to the latter was ‘intended’ (on evidence) to be a reference to the former. Many of the prayers we have set out above show that Mr Anturkar is correct, and that this is precisely the canvass of those who support the principal Petitioners.

60. There is before us an enormous amount of historical material. It is on both sides. We have repeatedly been invited by both sides to delve into this material. But that is precisely the course of action that seems to us to be prohibited unless the *Basavalingappa* test is first met. Only if the Petitioners pass through the *Basavalingappa* door can we possibly enter into an examination of the relative weight

and merits of contesting material including anthropological studies, old treatises, technical and scientific data and so on. The Petitioners must establish that they have the right to lead such evidence. That right must flow from their being able to establish that, in fact, *there is not and at the relevant time never was even a single member of the Dhangad community*, that being the entry in the Presidential Order and in the Amendment Order of 1956.

61. We note also for completeness Mr Khambata's other argument which goes "respondents, respondents everywhere but not a Dhangad among them." That is hardly a reason to allow the Petitioners through this jurisprudential portal.

62. What the Petitioners then do is to turn to the Affidavits filed by the State Government. There are altogether three such Affidavits. Both sides have roundly criticized these Affidavits. We reserve further comment. The sum and substance of these Affidavits, and we are not concerned with what impelled the fashioning of these Affidavits in this manner, is that 'there is not a single noted instance of a Dhangad in the State of Maharashtra'. We have put this as compactly as possible because any other discussion would lead us into directions we cannot go. There is a reference to, for example, a response to an RTI query of 2010 where the Public Information Officer of the Scheduled Tribes Certificate Scrutiny Committee Nagpur said that the Scheduled Tribes Certificate Scrutiny Committee Nagpur has not validated nor issued any validity certificate to a Dhangad Tribe candidate until today. This is read with a 5th May 2010 communication also from the Public

Information Office and Research Officer of the Scheduled Tribes Certificate Scrutiny Committee saying that from 2001 to December 2009 the Scheduled Tribes Caste Scrutiny Committee Nashik did not validate or issue any Validity Certificate to the Dhangad Tribe. At pages 478/526 is yet another communication, this time from the Scheduled Tribes Scrutiny Committee Thane's Information Officer. It is of 21st April 2010, and it says that the Dhangad Tribe is not within the jurisdiction of that community.

63. It is with the Government's assertion of a zero-member class of Dhangad that we turn to averments in the Affidavit in Rejoinder filed in the Maharani Ahilyadevi Samaj Prabodhan Manch Petition. At page 512 in paragraph 3C is the assertion that the Dhangad Tribe does not exist in the State of Maharashtra and hence the "substitution" of *Dhangar* for *Dhangad* ought to be done in the Presidential Order. It mentions that the population of the Dhangars is around 1.5 crores. There is an averment in sub-paragraph (D) that there is no categorical assertion about the existence or non existence of the Dhangar Tribe by the 7th Respondent, and then there is a reference to the information collected under the RTI Act.

64. But this takes us to one particular family. This is the Khillare family. In a separate compilation of documents of the Khillare family, seven persons have filed Affidavits. These Affidavits are most interesting. We will take one of them. It is by one Bhausahab Namdeo Khillare from District Aurangabad. He says in paragraph 1 that there are many Khillare families who reside in his village. All are from the *Dhangar* community. There is a family tree or a

genealogy showing legal heirs. In parts of this tabulation, the claim is that the individuals are *Dhangars* with an “R”, i.e., in the NT(C) category. But there are also entries here that show that individuals have obtained validity certificates as *Dhangad*. Paragraph 3 of this Affidavit then asserts that all Khillare family members going back three generations used to stay in the same village. They had common farmland. Their main occupation is farming and goat-herding. It is then claimed that at the time of the deponent’s father’s education and admission into school, the deponent’s grandfather was illiterate. He mentioned the caste as *Dhangad*. This was prior to 1950. When Bhausahab’s father admitted Bhausahab to a primary school in the village, Bhausahab’s father put Bhausahab’s caste as *Dhangad* in the school records. Bhausahab says he was ‘under the impression’ that *Dhangar* and *Dhangad* are ‘one and the same’. Therefore, he applied for a Scheduled Tribe Certificate to the authority in question. He received such a certificate on 26th November 1985. He has annexed a copy of that certificate.

65. But his story does not end there. Bhausahab then applied for a caste *validity* certificate of none other than the *Dhangad* Tribe to the Scheduled Tribe Certificate Scrutiny Committee, Nashik Division. He was granted this certificate of validity on 22nd January 2001 by the Scheduled Tribe Scrutiny Committee, Nashik Division. That is annexed as Exhibit “2”. In paragraph 6, he says that his is by no means a solitary case. Other members of his family may also have obtained such validity certificates, and they may indeed have done so using Bhausahab’s own validity certificate.

66. Paragraph 7 then says that Bhausahab was under the “strong” (not wrong) impression that *Dhangad* and *Dhangar* are one and the same; that there is a spelling mistake in the two words. Therefore, on the basis of Bhausahab’s father’s school certificate, he obtained a Scheduled Tribe certificate and then a certificate of validity.

67. Finally, he says that he belongs to the Dhangar community and that his grandfather who was illiterate erroneously mentioned his father’s caste as Dhangad, and that his father also mentioned Bhausahab’s own caste as Dhangad, all being under the same ‘strong’ impression. He claims that this is true too of all his brothers. In fact, he goes on to say that *all* Khillare family members are from the Dhangar community. He says he has executed this Affidavit (in March 2023) of his own free will and without coercion, duress, or fraud.

68. There are almost identical Affidavits by other family members.

69. These Affidavits raise more questions than they answer, and this is putting it mildly. Some things are noteworthy about these March 2023 Affidavits. As we have seen, these Petitions have been pending since 2017. The Khillare Affidavits and disavowals did not come for another six years. What is interesting about these Affidavits is not what they disclaim, but what they *fail* to disclaim. One of Mr Anturkar’s arguments is that the validity certificates were granted to the Khillares based on documents that are part of this Court’s records and all of which are prior to or

contemporaneous with 1950/1956. These documents are not disclaimed or disavowed in the Affidavits that the Khillares have filed. They are there in the compilation prepared by Mr Anturkar in the Tribal Rights Protection Commission Petition. Specifically, Mr Anturkar points to the documents in Volume II of the multi-part compilation presented by Mr Anturkar. Let us consider just three of these documents. Not all of them are in the best condition. Page 367 of Decemberme II shows a scheavingving certificate in the name of Namdeo Tanaji Khillare. The entire document is in Devnagari but the second entry says Dhangad (Hindu). This is not the only document. Page 369 is another document. A typed copy is at page 370. It ieavinheavingving certificate of 6th May 1955. The entry here is Dhangad (Bhartiya). Then at page 400, we find a vigilance report. We unfortunately do not have a typed copy of this. It is of 17th August 2001 in the context of an application for a validity certificate and it is one that examines the much older, vintage supporting documents. This vigilance report is in respect of a validity claim in regard to a Subhash Namdeo Khillare. It notes the entries of Dhangad.

70. The Khillare story is, therefore, that all of them had documents showing their community as *Dhangad*. Some documents pre-date the Constitution and evidently the Presidential Order. They obtained caste certificates on this basis. They also sought and obtained caste validity certificates. Now, in late 2023, they disclaim all this and say they were never Dhangads. They ‘strongly believed’ that they were Dhangars and equally ‘strongly’ believed that the two were the same. In other words, despite their having obtained these certificates — and presumably benefits based on these certificates

— they *now* claim that all this that was done at their instance and on their applications was wrong, can be disclaimed and disavowed, that their certificates should read Dhangar, and that Dhangar should be treated as Dhangad. Why are they doing this? The answer is plain: to empty the Dhangad class, and to turn it into a zero-member class so that the Basavalingappa zero-member solitary exception test is met. For, if there is even a single *Dhangad* at the time of the Presidential Order, the Petitions must fail.

71. What is the answer to all this material from Mr Anturkar? How do the Petitioners deal with these documents, some of great antiquity? The answer from Mr Khambata was that these documents of 1952, 1953 and the vigilance report of 2001 have all been now found to be ‘defective, forged, bogus and overwritten’. But when was this discovery? Mr Khambata took us to a supplementary compilation. The compilation mentions a show cause notice issued by the Scrutiny Committee, Aurangabad to Subhash Khillare and an order in Sachin Palhal’s case, with replies by Khillare and an Affidavit of Ashok Palhal.

72. This compilation is less than impressive. There is now apparently a *second* vigilance report, but this is of 5th December 2023 even while hearings were going on before us. The allegation now is that the school leaving certificates of the 1950s are apparently in ‘different ink’ with ‘overwriting’. In regard to Palhal at page 51 of this compilation, there is a reference to Laxman Rangnath Palhal saying that the ‘Dhangad’ word is in different ink. The letter “ढ” is allegedly overwritten. We can hardly treat this finding as conclusive.

We note for example that there is in this revised compilation and this subsequent latter-day epiphany by the authorities some attempt to say that school entries are overwritten and that a “र” has been changed to a “ड”. That makes no sense whatsoever. It is not even Khillare’s case in the Affidavits that he filed in March 2023 that anybody tampered with those school leaving documents. In fact, those very documents were relied on in support of the claim for validity. The photocopies that are shown to us (for example page 397) do not in our view show unequivocally that there was any such overwriting. We are not required to return a finding on this. Our court has conclusively held that these validity committees do not have inherent powers of review; that absent a specific conferment of a review power, these validity scrutiny committees are not entitled to reopen issues long settled.⁴

73. What does this tell us? It means that these grounds of review and these actions by the scrutiny committee are, following the decision of the Division Bench, completely without legal basis. It is not possible to accept as the unvarnished position that the 1952 and 1953 documents have been tampered with. Since then and until today, nobody ever suggested this. Those who obtained benefit never said this. That they obtained benefit is not in dispute. It is only now, well after these Petitions were filed, that these disavowals come to be made — and they are made for one solitary purpose, viz., to empty the jurisprudential bucket and turn the Dhangad into a zero-member class to meet the *Basavalingappa* test.

⁴ *Bharat Nagu Garud v State of Maharashtra & Ors*, and connected matters, 2023 SCC OnLine Bom 2537, per GS Kulkarni J.

74. Clearly, this poses possibly the single biggest problem for the Petitioners. It means that the class of Dhangad in 1956 was *not* a zero-member class, even on the material that is before us today. Later disavowals are infinitely problematic. They would mean that on the basis of some caste scrutiny committee's impermissible review jurisdiction the entire Presidential Order and every entry in it would be open to reinterpretation and re-examination 75 years down the road. We do not think *Basavalingappa* contemplated any such situation at all.

75. This is one aspect of the matter. A different argument is whether the kind of inquiry that Mr Khambata proposes is at all permissible on the *Basavalingappa* frame.

76. There is another aspect and it has a direct linkage to the Supreme Court decision in *Basavalingappa*. As we noted, the *Basavalingappa* decision mentioned the States Reorganisation Act 1956 in regard to State of Mysore. The present Petitions however have proceeded on the basis of the 6th September 1950 Presidential Order, then the 25th September 1956 Scheduled Caste and Scheduled Tribe (Amendment) Act and then jumped directly to the 1976 Amendment Act. But there are certain intervening factors that must be noted. These equally apply to the factual aspects of the matter, namely, whether it can safely or fairly be said that the Dhangad entry in 1950 or in 1956 was indubitably and without dispute a zero-member class.

77. Part III of the 6th September 1950 Presidential Order dealt with the State of Bombay as it then existed. There was no entry for either Oraon or Dhangad in 1950 for the State of Bombay. Part IV dealt with the then State of Madhya Pradesh. In particular, it dealt with Melghat Taluka of Amravati District and the Sironcha and Gadchiroli Tehsils of Chanda District. Entry 26 in Part IV for the then State of Madhya Pradesh was *Oraon*.

78. Following this, on 30th March 1955, came the report of what is known as the Kaka Kalelkar Commission, the Backward Classes Commission, with its recommendations. For the State of Bombay in the category of Other Backward Classes at Sr No 82 was the entry of *Dhangar* said to be traditionally cattle herders, cultivators, forest labourers and sheep rearing people. For Madhya Pradesh, the recommendation in Sr No 26 was of an existing list excluding localities and it mentioned *Oraon* and that throughout the State of Madhya Pradesh the sub-tribes of Oraon were *Dhanka and Dhangad*.

79. Then came the States Reorganisation Act of 31st August 1956. The appointed date was 1st November 1956. Section 8 had the formation of a new State of Bombay. It comprised *inter alia* the territories of Buldhana, Akola, Amravati, Yavatmal, Wardha, Nagpur, Bhandara and Chanda Districts, which were till then in the State of Madhya Pradesh. Correspondingly, Section 9 said that the new State of Madhya Pradesh on the reorganisation would include the territories of the existing State of Madhya Pradesh except those mentioned in Section 8(1)(c), namely the districts we have mentioned above.

80. This was 31st August 1956. About a month later, on 25th September 1956 there came the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act of 1956. Part III dealt with the State of Bombay. Part IV dealt with the State of Madhya Pradesh. It mentioned for the territories of Melghat Tehsil of Amravati district and Gadchiroli and Sironcha Tehsils of Chandar Districts and also the Kelapur, Wani and Yavatmal Tehsils of Yavatmal District in entry 26 'Oraon including Dhanka and Dhangad'. There was no entry in Part III of either Oraon or Dhangad for the State of Bombay. On 19th October 1956, there came the Constitution (Seventh Amendment) Act 1956. Article 1 was amended, and the States and territories were specified as further first set out in the schedule. This included the territories of Bombay as specified in Section 8(1) of the States Reorganisation Act 1956 and for Madhya Pradesh those in Section 9(1).

81. It is *after* this that there came the 29th October 1956 Scheduled Caste and Scheduled Tribe Lists (Modification) Order of 1956 under Section 41 of the States Reorganisation Act. Schedule III of this Modification Order substituted paragraph 3 of the 1950 Presidential Order. It said that any reference to the Order or to a State or District or other territorial division would be construed as constituted from 1st November 1956, i.e., from the appointed date of the States Reorganisation Act. Now the Schedule in Part IV had Entry 7. This meant that Melghat Tehsil of Amravati, Gadchiroli and Sironcha Tehsils of Chanda Districts and Kelapur Wani and Yavatmal Tehsils of Yavatmal District were now included in the State of Bombay. Entry 27 of the 29th October 1956 Modification Order now had an entry for Oraon including Dhanka and Dhangad.

1st November 1956 was the date on which the States Reorganisation Act came into force.

82. Leaving aside the subsequent creation in 1962 of the State of Maharashtra, what this tells us is that there were districts in Madhya Pradesh that on account of the States Reorganisation Act 1956 came to be taken out of Madhya Pradesh and included in the State of Bombay. At that time, that is to say between August 1956 and before 29th October 1956, the entries of Oraon and *Dhangad* existed in the very districts in Madhya Pradesh that were being brought into the State of Bombay.

83. Necessarily and logically, this would mean that any Dhangads in those Madhya Pradesh districts would therefore automatically become Dhangads in the reconstituted or reorganised State of Bombay.

84. Nobody has ever challenged the entries in relation to Madhya Pradesh in regard to Oraon or Dhangad or suggested that those entries were an empty class. That is not a presumption or an assumption that we can make. The mistake in the Petitioners' entire argument is to move directly from 6th September 1950 to 29th October 1956 without taking into account the geographical delimitation and reorganisation of the states by which certain districts in the erstwhile State of Madhya Pradesh were absorbed into and made part of the State of Bombay. Logically it would follow, therefore, that if there were indeed any Dhangads in Madhya Pradesh (and this is not under challenge before us at the cost of

repetition), then what we began to call during arguments these 'Madhya Pradeshi Dhangads' would necessarily become 'Bombay Dhangads'.

85. This is important because as we have seen there was a three-fold basis for the Supreme Court decision in *Basavalingappa*. *First*, that there was no caste such as Bhovi at all; *second*, that this was undisputed; and *third*, this was pegged to the situation as it existed before the States Reorganisation Act of 1956.

86. The differentiation in our case is clearly that there is very much a dispute about whether Dhangad was a non-existent community prior to the States Reorganisation Act 1956 and, in any event, before the 29th October 1956 Scheduled Caste and Scheduled Tribe Lists (Modification) Order.

87. What the Petitioners apparently ask us to do is to conflate the concepts of the State of Bombay in 1950 with the then State of Bombay after the States Reorganisation Act and both with the State of Maharashtra as it stands today. That is an exceedingly difficult proposition to accept. Those boundaries have in fact altered over time, not once but twice. We are concerned with the first of these delimitations in 1956.

88. In the course of arguments, there was a mention that the record shows that there was only one claimant, and that this claimant was nowhere near the north western parts of Maharashtra which would have come to it from Madhya Pradesh but was in the

Aurangabad area and that too was finally found to be an Oraon. That will not carry the Petitioners' case much further given what is before us.

89. As a result, on these two determinants running in parallel, viz., the entire Khillare family disavowing their tribe claims and doing so very recently in 2023, and the failure to explain the consequence of the States Reorganisation Act, it is not possible to hold that this case meets the *Basavalingappa* test of an undisputed zero-member class prior to the States Reorganization Act.

90. Instead, what we have been asked to do is to take evidence whether the class was empty or not; or worse, yet, whether it should now be *deemed* or held to *have been empty* in 1950 or just prior to 1956. That is not an endeavour that is permissible in our reading of the decision in *Basavalingappa*.

91. On an objective understanding, Mr Khambata's argument really is that if the Presidential Order mentions a tribe but there is not a single tribal, the Court is surely not helpless. We are being asked to 'construe' an entry not to include or exclude it; we must find the tribe which is, in his words, 'most likely to have been the reference intended in the Presidential Order'. Absolute numbers may not be dispositive, but it is certainly true that the existence of even a single element in the Dhangad community would render the class non-empty.

92. Mr Khambata was at some pains to take us through various entries for Bihar and other areas and to say this was not a question of transliteration. There was also a reference to the 1976 Amendment Act which mentioned “Oraon, Dhangad” and the suggestion was the differentiating comma, meaning that these were two separate classes. It is difficult to see how this could take the matter much further. The submission really is that in 1956 there was ‘no Dhangad at all in the State of Bombay and there is no material to show there was’. Mr Khambata would have us look at what he describes as ‘mountainous’ evidence to show that the intended reference was to Dhangad. The written submission says that between 1837 and 1956 there is not a single official document or record published by any official body referred to Dhangad tribe as being in existence in Bombay State. That is the submission in paragraph 21 at page 11 of the written submissions. The submission goes on to refer to a note on exhibits where various official sources have been documented, census reports are considered and there is a reference to what is said to be an authoritative text in regard to the Dhangad community.

93. But this is nothing but an invitation to enter forbidden territory. Mr Anturkar’s argument is precisely this: that no matter how voluminous or mountainous the evidence, this Court cannot possibly examine it, except in that one exceptional and peculiar circumstance outlined in *Basavalingappa* itself.

94. This is not the end of the difficulties by any means in the Petitioners’ way. Mr Khambata endeavours to get over the next

immediately obvious problem, that of a binding judgment of a Division Bench of this Court by taking us to the Supreme Court decision in *State of Orissa v Dasarathi Meher*.⁵ Now this is a judgment that undoubtedly looked at the earlier decision in *Basavalingappa*. *Dasarathi Meher* is a judgment of a two-judge bench of the Supreme Court. It was clearly bound by the five-judge Constitution Bench decision in *Basavalingappa*. If it is Mr Khambata's submission that despite *Basavalingappa*, the *Dasarathi Meher* Court proceeded to enquire into the appropriateness of a query, then that submission would have to be rejected because it would amount to saying, in effect, that *Dasarathi Meher* was *per incuriam*. But that is not what the *Dasarathi Meher* Court did at all, as a very brief discussion will demonstrate. In paragraph 10 of *Dasarathi Meher*, the Supreme Court considered the decision in *Basavalingappa*. It also considered the Constitution Bench judgment in *Bhaiya Lal v Harikisan Singh*,⁶ where the claim was that the Dohar Caste was a sub-caste of a Chamar Caste. The *Bhaiya Lal* Constitution Bench held that no such enquiry was possible. Then there is a third Constitution Bench judgment well known to us in this state in the *State of Maharashtra v Milind & Ors*,⁷ where the Scheduled Tribe was Halba/Halbi and the High Court held on some material that Halba-Koshti was 'included in Halba or Halbi'. The Supreme Court in *Milind* held that this was impermissible. It culled out five propositions. These are reproduced in *Dasarathi Meher* in

5 (2018) 18 SCC 176.

6 AIR 1965 SC 1557.

7 (2001) 1 SCC 4.

paragraph 12, being the findings of the Supreme Court in paragraph 36 of *Milind*'s case:

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

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

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

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

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

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v Anirudh Patar*⁸ 4 and *Dina v Narain*

8 (1970) 2 SCC 825.

*Singh*⁹ did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. **As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter.**”

(Emphasis added)

95. As we have seen, the *Milind* decision clearly held the Division Bench judgments of the Supreme Court in *Bhaiya Ram Munda v Anirudh Patar & Ors*¹⁰ and *Dina v Narain Singh*¹¹ did not lay down the correct law. *Dasarathi Meher* noted that in *Milind*, the Constitution Bench of the Supreme Court reaffirmed both *Basavalingappa* and *Bhaiya Lal*.

96. In paragraph 14 of *Dasarathi Meher*, the Court held that the power of a court is limited in such cases. A Court cannot modify, alter, add to, or subtract from the Presidential Order or a Parliamentary Notification. It went to say that at the same time the Court has to ensure that the Order in such a manner that no caste or tribe *intended* by the President or Parliament to be included is actually excluded.

97. But that is precisely what *Basavalingappa* itself says.

9 (1971) 38 ELR 212.

10 (1970) 2 SCC 825.

11 (1971) 38 ELR 212.

98. The discussion in *Dasarathi Meher* was about two other Scheduled Tribes namely Kuli and Kulis. The concern of the Court is reflected in what is said in paragraph 27 of *Dasarathi Meher*. This again is a phrasing that traces back to paragraph 7 of *Basavalingappa* for the *Dasarathi Meher* Court noted that the State had failed to show that there was *any* community, caste or tribe known as Kulis. The only community known was Kuli. Then in paragraph 28, the *Dasarathi Meher* Court referred to *Basavalingappa* again and held that the case before it was very similar because the State had failed to place any material on record to show that there was any caste or tribe by the name Kulis. The Court therefore concluded that the word Kulis was simply a plural for the term Kuli.

99. Correctly read, *Dasarathi Meher* is not at odds with *Basavalingappa*. It does not break ranks with *Basavalingappa*. It could not. It proceeds on an identical footing that the entry is a zero-member class and therefore some meaning and heft must be given to entry in the Presidential Order.

100. It would be a mistake to believe that the evidence of a zero-member class must necessarily come from (and only from) the State Government. That is not a requirement. Once there is material before a Court, and this material is adequate to dislodge the case that the entry in the Presidential Order or the Amending Act is empty or a zero-member class, then the *Basavalingappa* door must be held to be firmly shut.

101. The fact that there is not a single Dhangad petitioner makes no difference. That is not a test either.

102. This takes us to the next question: the Division Bench judgment of this Court sitting at Aurangabad in *Prakash Prabhurao Kokane v State of Maharashtra & Ors*.¹² The judgment is clearly in the Petitioners' way. If the same issue was canvassed there and was decided against the present Petitioners submissions, then these Petitioner before us would have to show us that the *Kokane* judgment is *per incuriam*. We made it clear at the outset that even we were persuaded to disagree, that would not necessarily allow us on any sound principle of *stare decisis* to simply hold that *Kokane* was *per incuriam*. We would have had to refer specific questions of disagreement to a larger bench. Perhaps by way of abundant caution the Petitioners have also sought a review of the *Kokane* judgment.

103. Before we consider these matters, we must see what was before the *Kokane* Court and how it came to be decided. To put it bluntly, this very issue of *Dhangar v Dhangad* was directly before the *Kokane* Court. The petitioner, Prakash, passed his 12th standard examination in 1986. He wanted to take admission to a veterinary college in Parbhani. His marks were insufficient. He joined the Devgiri Science College in Aurangabad in the first year BSc course. He still desired to join the veterinary college. He contended that his *caste* was Dhangad. He also said that Dhangad was one of the oldest original tribes in India. He went on to say that Dhangad is known by different names in different parts of the country — and Dhangad is

12 2000 SCC OnLine Bom 158 : 2001 Supp (1) Bom CR 195.

often known as Dhangar. He claimed that the Government of India assumes this difference in spelling. He therefore contended that the two words are used 'interchangeably' and that they are the same. He also argued that the earlier State of Bombay included parts of the previous states of Hyderabad, Central Provinces, Madhya Pradesh and even the Mysore State. He accepted that the original Presidential Order of 1950 did not include Dhangar/Dhangad in the list of the Scheduled Tribes in any state except Madhya Pradesh. Oraon was one of the listed Scheduled Tribes. After the 1956 Scheduled Caste Scheduled Tribe Amendment Act, in Madhya Pradesh there was the entry of 'Oraon including Dhanka and Dhangad'. His entire case was that when these districts from Madhya Pradesh were merged into (what is now) Maharashtra, 'Oraon including Dhanka and Dhangad' were shown in certain Tehsils that were formerly in Madhya Pradesh. But no census report of 1961 or 1971 ever mentioned a population of Dhangad in Maharashtra at all.

104. Kokane therefore contended that the Dhangad Scheduled Tribe does not and never existed in the State of Maharashtra or if at all it is nothing but Dhangar. He reiterated that the two are the same.

105. This is precisely the case of the Petitioners before us today.

106. The judgment notes that the Government of Maharashtra recognised Dhangar as a Backward Class early in 1967. It was therefore treated differently. This also was brought into question

before the Division Bench. The judgment of the Division Bench refers to the Entry 36 of the 1976 Act and mentions the phrase ‘Oraon Dhangad’ — without the separating comma. To the reasoning that follows, this makes very little difference and we do not believe that this is a reason to disagree with the judgment nor to hold that it is *per incuriam*.

107. Interestingly, an affidavit in reply was filed by Dr Gare, the then director of Tribal Research and Training Institute Maharashtra. He was undoubtedly an authority. Much has been said about Dr Gare’s work and how the Division Bench has apparently misread or misconstrued Dr Gare’s views. But yet again that is a matter of *evidence*, something that is only possible if one is allowed to look at the evidence in the first place. Contrary to the somewhat remarkable stand by the State Government before us today, in Kokane, the government *denied* that there was no population of Dhangad in the censuses of 1961 and 1971. It claimed that there was one recorded Dhangad person in a census report. The State denied that the two are the same. Even more interestingly, the State went on to say, ‘even assuming that no certificate was issued in Maharashtra to a Dhangad Tribal’, that itself would show that the Dhangad Tribe was distinct from the Dhangar caste.

108. This is curious because there is nothing at all from the State Government to explain how between 2000 and 2017 it has successfully achieved this quite remarkable U-turn on Affidavit. In 17 years, it has gone from denying that there was no Dhangad population to asserting that there was no Dhangad population.

109. Inevitably, the stand of the State Government is unreliable, at least for the purposes of one part of the *Basavalingappa* trifecta of tests, viz., whether the zero-member class is an undisputed position. Just under two decades ago, the State Government said the class was *not* empty. Now it claims it *was* empty. It is pointless to rely upon either assertion of the State Government — that there once existed a Dhangad or that there never existed a single Dhangad.

110. Both statements relate back to the same period, viz., 1956. Both statements cannot co-exist.

111. Reference is made in the *Kokane* judgment to material from Dr Gare. If we have any reservation, it is whether the Division Bench could even look at this material to begin with. But we understand that this was perhaps necessary to accurately set out the arguments before the Court. We find these in paragraphs 24 to 28 of the judgment (SCC Report) which read thus:

“24. From these respective stands of the Petitioner and the respondents, it appears that **the Petitioner wants to contend that:**

(1) the community Dhangar is nothing but Scheduled Tribe Dhangad;

(2) the 1950 Order, the 1956 Act and the 1976 Act, wherever Dhangad is mentioned, it should be considered including Dhangar.

25. Thus, the Petitioner wants that the Court should interpret the term “Dhangad” in such a way as to include the term “Dhangar” in it.

26. The other stand taken by the Petitioner is that there is no tribe by name Dhangad in the State of Maharashtra. However, the tribe Dhangad is mentioned in the 1950 Order, the 1956 Act and the 1976 Act for the State of Maharashtra; and to give proper meaning to that, the community Dhangar should be considered as Tribe Dhangad; otherwise, the very declaration would be meaningless.

27. The third stand of the Petitioner is that there is no difference between Dhangar and Dhangad. They are one and the same; and only because of method of pronunciation, they are being shown different.

28. The question thus put before the court is to be considered from two aspects:

- (1) How far the Court has jurisdiction to interpret the words used in the 1950 Order, the 1956 Act and the 1976 Act to include Dhangar in place of Dhangad or to say that Dhangar is Dhangad?
- (2) Whether the Petitioner has proved that Dhangar is Dhangad?”

(Emphasis added)

112. These are *precisely* the questions we are asked to examine today. Perhaps the only difference is that we do not believe, on our reading of *Basavalingappa*, that the second question in paragraph 28 was at all a course of action open to the writ court. But our disagreement with the permissibility of posing that question is against the Petitioners before us, not in their favour.

113. Inevitably, there is the reference to *Basavalingappa* in *Kokane*. The findings in paragraphs 36, 37, 38 and finally 42 read:

“36. In the present case, it is true that in Bombay State, Oraon Dhangad was not the tribe existing in the year 1950. But, that tribal community was in existence in the Central Provinces. In 1956 and 1960, when reorganisations of the States took place, certain parts of the Central Provinces and State of Madhya Pradesh were included in the State of Maharashtra. Those parts, which were adjacent to Chota Nagpur area of the State of Madhya Pradesh, where Oraon Dhangad Tribe was in existence, are merged in the State of Maharashtra; and naturally, not because of migration of the community, but because of the change in the borders of the States, the persons of Oraon Dhangad tribe happened to come in the State of Maharashtra; and to meet this exigency, in the 1956 Act and the 1976 Act, Oraon Dhangad are shown as Scheduled Tribe in the State of Maharashtra. The Oraon Dhangad Tribe was clearly identified in the State of Madhya Pradesh and Central Provinces, and that came in the State of Maharashtra because of reorganisation of the States. There is no reason to find out which community is included in the Tribe Oraon Dhangad. That Tribe is well-identified and, therefore, the Court need not go into the question as to whether some other community, which is in Maharashtra, can be accepted as Oraon - Dhangad community, because that was not in the erstwhile State of Bombay in 1950. The problem in *B.Basavalingappa's* case was quite different and, therefore, it was answered accordingly by the Supreme Court.

37. The principle laid down in *B.Basavalingappa's* case is followed by the Apex court in *Bhaiya Lal's* case, which is

again a decision of the Constitutional Bench; and it is observed (para 8, page 1559 of the Report):

“ . . . It is thus clear that, in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art.341, one has to look at the public notification issued by the President in that behalf. . . .”

38. Therefore, the Apex Court had held that it was not open to the court to find out whether Dhor caste was sub-caste of Chamar, because Dhor was not included in the Presidential Notification as sub-caste of Chamar.

42. So, in the present matter, the Court cannot take up the enquiry as to whether Dhangars are Dhangads, or, whether Dhangar is synonym of Dhangad, or, whether Dhangad includes Dhangar, or, so far as the State of Maharashtra is concerned, Dhangad and Dhangar are one and the same.”

(Emphasis added)

114. That is our finding too.

115. The *Kokane* Division Bench then went on to consider the submissions based on the 1971 census report. It rejected the argument of two words being used interchangeably. It held as a finding that in Maharashtra Dhangad and Dhangar are never used interchangeably. Dhangad, the Division Bench said, is a community well known in the State from the historical times with a specific occupation and with its own place in the *caste* system. There was some discussion on material in this regard, but we do not think it is

important or necessary to look at this. The conclusion in paragraphs 65, 66 and 68 is this:

“65. So, by no stretch of imagination, it can be said that Dhangar in Maharashtra are same as Oraon Dhangad in Central Provinces, part of which is merged in the State of Maharashtra after reorganisation of States.

66. **The Petitioner is trying to take advantage only of one circumstances that there is some similarity in the name of these communities, Dhangar and Dhangad; but that is a very thin thread for the Petitioner to claim that Dhangars are Dhangads, a Scheduled Tribe described in the 1950 Order, or, the 1956 Act, or, the 1976 Act. On facts also, the Petitioner has failed to prove that Dhangar means Dhangad, or, Dhangar is synonym of Dhangad, or, as there is no community Dhangad found in the State of Maharashtra, Dhangar should be considered as Dhangad for the proper interpretation of the 1950 Order, or, the 1956 Act, or, the 1976 Act.**

68. If the contention of the Petitioner is accepted that Dhangar is Scheduled Tribe, which is described as Dhangad in the 1950 Order, then, not only the persons of Scheduled Tribe of Dhangad Tribe will suffer; but, all the persons from other Scheduled Tribes will also suffer to a great extent. The population of Dhangar is sizeable in the State of Maharashtra. No doubt, they are somewhat backward as compared to other castes in the State of Maharashtra; but they are far better than the Scheduled Tribe communities, economically, socially and educationally. For centuries, they are considering themselves a caste in Hindu community equivalent to Marathas and Kunbis. **If such a community is allowed to be notified as Scheduled Tribe, then the very purpose of giving Constitutional protection to real Scheduled**

Tribes people will be lost. The benefits of reservations, which are provided for the Scheduled Tribes, will be usurped by Dhangar community, if they are styled as Scheduled Tribe, because of their superiority over the real Scheduled Tribes. So, from this point of view also, the relief, which is being sought by the Petitioner, cannot be granted, especially when there is nothing to indicate that Dhangars are Scheduled Tribe, or, that, Dhangar and Dhangad are the same.”

(Emphasis added)

116. Consequently, what is being attempted here is a full-fledged ‘review’ on the basis of *later* facts, viz., the Khillare family disavowals. It cannot be otherwise; for, all prior material — material from a time before *Kokane* — cannot now be considered.

117. In the context of what we have just said about the Khillare family, the observations in paragraph 73 are important and directly relevant to two transferred Writ Petitions from Aurangabad. We have already seen the prayers there. In paragraph 73 the Division Bench in *Kokane’s* case held:

“73. The two Petitioners in this Petition had obtained the certificates that they belong to Dhangad, Scheduled Tribe community. Their certificates were referred for verification to the Scheduled Tribes Caste Certificate Scrutiny committee (hereinafter referred to as “the Scrutiny Committee”). The Scrutiny Committee, by its order dated 27-3-1996, rejected both the certificates, holding that the Petitioners do not belong to Dhangad, Scheduled Tribe. This rejection is challenged by the Petitioners, on the grounds that (1) Dhangar is Dhangad in the state of Maharashtra; and (2) the Scrutiny Committee has wrongly

rejected the evidence, which was produced by the Petitioners, on the ground that all the certificates were of the period subsequent to the 1950 Order and, therefore, they had no probative value. Therefore, the Petitioners contend that they ought to have been considered as Dhangad, Scheduled Tribe.”

118. This is exactly the basis of the two transferred Petitions.

119. It is difficult to see on what basis it can now be urged or argued that *Kokane* is incorrect or is *per incuriam*.

120. From our perspective perhaps there is one aspect that was not spelt out as clearly in the *Kokane* judgment as we have done today, which is to define narrowly the set of circumstances in which an enquiry is permissible following *Basavalingappa* and *Bhaiya Lal*. That circumstance is that such an enquiry is permissible *only* when there is a zero-member class. The reason is, as we have said, that no Presidential Order and no entry in a Presidential Order can be meaningless or without at least one member of that class. This aspect of the matter is to our mind dispositive so far as a review is sought of the judgment in *Kokane*; and, equally, of the submission that *Kokane* must be held not to be binding on us as a judgment rendered *per incuriam*.

121. But there is more. Equally damaging to the Petitioners’ case is the decision of the Supreme Court in *State of Maharashtra v Keshao Vishwanath Sonone & Anr.*¹³ Here, a three-Judge Bench of the

13 2020 SCC OnLine SC 1040.

Supreme Court had before it a set of appeals against a judgment of a Division Bench of this Court. The issue pertained to a Scheduled Tribe Gond Gowari in Maharashtra, included in the 1950 Order as amended by the SC ST Orders (Amendment) Act 1976. The High Court had allowed four Writ Petitions. Sonone claimed to be a Gowari. He said this was a Scheduled Tribe. There was no “Gond Gowari” in existence. The issue was in regard to a Caste Certificate which was sent for verification, and which came to be invalidated. There were other Writ Petitions as well. The judgment noted that in 2011 the Gowari community was included in the Other Backward Class category from the common central list in respect of State of Maharashtra. The High Court had declared that the Gond Gowari Tribe was completely extinct before 1911 and no trace of it was found either in the Maratha empire of the Central Provinces in Bihar or in the State of Madhya Pradesh prior to 1956. It went on to hold and declare that there did not exist any tribe known as Gond Gowari on 29th October 1956, the date of the Constitution (Scheduled Tribes) Order 1950 in relation to the then State of Bombay. It held that the tribe Gond Gowari in the Order was not a sub-tribe of Gowari. Those belonging to the Gowari community could not be denied the benefits due to Scheduled Tribes only because the Gowari community was shown in the list of Other or Special Backward Classes. The submission on behalf of the appellants was that the High Court was in error in ‘tinkering’ with the entries under the Presidential Order of 1950. This could only be done by an act of Parliament under Article 342(2). The submission was that the *Scheduled Tribe* Gond Gowari included in the 1950 Presidential Order did indeed exist and was distinct from the *caste* Gowari. The respondents submitted that it was open to the High

Court to ascertain the “true meaning and content of the entry Gond Gowari as included in the Presidential Order 1950”. Another submission was that the ratio of the Constitution Bench in *Milind’s* case was not in consonance with the ratio in *Basavalingappa*. Therefore there was a submission that everything needed to be referred to an even larger Bench.

122. The Supreme Court considered the relevant provisions of the States Reorganisation Act. It went on to note the six different questions that arose for consideration in paragraph 42:

“42. From the submissions of the learned counsel for the parties and materials on record, following questions arise for consideration:

42.1.(1) Whether the High Court in the writ petition giving rise to these appeals could have entertained the claim of the caste “Gowari”, which is not included as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950, that it be declared a Scheduled Tribe as “Gond Govari” which is included at Item 18 of the Constitution (Scheduled Tribes) Order, 1950 applicable in the State of Maharashtra and further to take evidence to adjudicate such claim?

42.2.(2) Whether the ratio of the judgment of the Constitution Bench of this Court in *B. Basavalingappa v. D. Munichinnappa* [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269] permits the High Court to take evidence to find out whether “Gowari” are “Gond Gowari” and is there any conflict in the ratio of the judgment of the Constitution Bench in *B. Basavalingappa* [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269] and subsequent Constitution Bench judgment of this Court in *State of Maharashtra v. Milind* [*State of Maharashtra v. Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] ?

42.3.(3) Whether the High Court could have entered into the adjudication of the issue that “Gond Gowari” which is a Scheduled Tribe mentioned in the Scheduled Tribes Order, 1950, as amended up to date is no more in existence and was extinct before 1911?

42.4.(4) Whether the conclusion of the High Court in the impugned judgment [*Adim Gowari Samaj Vikas Mandal v. State of Maharashtra*, 2018 SCC OnLine Bom 2190] that “Gond Gowari” Tribe was extinct before 1911 is supported on the materials which were on record before the High Court?

42.5.(5) Whether caste “Gowari” is same as “Gond Gowari” included at Item 28, Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 and the High Court could have granted declaration to caste “Gowari” as “Gond Gowari” entitled for Scheduled Tribe certificate?

42.6.(6) Whether the High Court is correct in its view that “Gond Gowari” shown as Item 28 in Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 is not a sub-tribe of Gond, hence, its validity cannot be tested on the basis of affinity test specified in Government Resolution dated 24-4-1985?”

123. We are actually concerned today with Questions 1, 2, 3 and 4 in *Sonone’s* case. The Supreme Court noted the *Basavalingappa* judgment. It noted the submission made by the Respondents on paragraph 7 of *Basavalingappa*, which we have already seen. Then the Supreme Court considered the Constitution Bench judgment in *Bhaiya Lal*. For our purposes, the relevant portion in *Sonone’s* case is the finding that the observations in *Basavalingappa* in paragraph 7 do not dilute the ratio of that very judgment of paragraph 6. The *Sonone* Court held that in *Basavalingappa* the Supreme Court had

approved of the High Court going into the evidence *in the peculiar facts of the case where the fact was not disputed that there was no caste known as Bhovi in the Mysore State before 1956*. The Sonone Court emphasized this portion. It then noted the reaffirmation of *Basavalingappa* in *Bhaiya Lal's* case. It then went on to consider further authorities in that regard including the decisions in *Kumari Madhuri Patil & Anr v additional Commissioner, Tribal Development & Ors*,¹⁴ and *Nityanand Sharma & Anr v State of Bihar & Ors*,¹⁵ where the question was about the Lohar community. Then it turned to the Constitution Bench judgment in *State of Maharashtra v Milind*.¹⁶ Finally, the Sonone Court said that the inescapable conclusion was that the High Court could not have entertained the claim or looked into evidence to decide whether Gowari was part of the Scheduled Tribe Gond Gowari. There was no conflict, the Sonone Court held, between the Constitution Bench judgment in *Basavalingappa* and *Milind*. It repelled the submission that there had to be a reference to a larger Bench. It answered Questions 1 and 2 as follows:

“65. In view of the ratio of judgments [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269], [*Bhaiya Lal v. Harikishan Singh*, AIR 1965 SC 1557] of this Court as noticed above, the conclusion is inescapable that the High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe “Gowari” is part of Scheduled Tribe “Gond Gowari”, which is included in the Constitution (Scheduled Tribes) Order, 1950. It is further clear that there is no conflict in the ratio of Constitution Bench judgments of this Court in *B.*

14 (1994) 6 SCC 241.

15 (1996) 3 SCC 576.

16 (2001) 1 SCC 4.

Basavalingappa case [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269] and *State of Maharashtra v. Milind* [*State of Maharashtra v. Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117]. The ratio of *B. Basavalingappa case* [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269] as noted in para 6 of the judgment and extracted above is reiterated by subsequent two Constitution Bench judgments in *Bhaiya Lal case* [*Bhaiya Lal v. Harikishan Singh*, AIR 1965 SC 1557] and *Milind case* [*State of Maharashtra v. Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117]. There being no conflict in the ratio of the above three Constitution Bench judgments [*State of Maharashtra v. Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117], [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269], [*Bhaiya Lal v. Harikishan Singh*, AIR 1965 SC 1557], we do not find any substance in the submission of Shri Rohatgi that for resolving the conflict, the matter need to be referred to a larger Constitution Bench. We, thus, answer Questions 1 and 2 in the following words:-

65.1. The High Court in the writ petition giving rise to these appeals could not have entertained the claim of a caste “Gowari” that it be declared a Scheduled Tribe as “Gond Gowari” included at Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 nor could the High Court have taken evidence to adjudicate the above claim.

65.2. There is no conflict in the ratio of the judgments of Constitution Benches of this Court in *B. Basavalingappa case* [*B. Basavalingappa v. D. Munichinnappa*, AIR 1965 SC 1269] and *Milind case* [*State of Maharashtra v. Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117].”

124. Then the *Sonone* Court took up Questions 2 and 3 together. As we have noted, these questions were whether the High Court could have entered into the adjudication and whether the conclusion of the High Court was supported. We are concerned only with Question 3. The Supreme Court held that the High Court could not have entered into the issue as to whether a Tribe which is included in the 1950 Presidential Order did not exist. It answered this question in the clearest possible terms by saying that the High Court could not have entered into the issue and therefore the conclusion of the High Court that Gond Gowari Tribe had been extinct before 1911 was not supported by materials. The Court did consider the additional material. At some point what was cited before this Court was the decision of the Supreme Court in *State of Maharashtra & Ors v Mana Adim Jamat Mandal*¹⁷ which has also been relied on by Mr Khambata. The *Sonone* Court expressed doubts about the correctness of the ratio of that judgment but more importantly it held that the *Mana Adim Jamat Mandal* judgment could not be read as a binding authority to hold that Gond Gowari is not a sub-tribe of Gond. The entire decision in *Mana Adim Jamat Mandal* turned on the interpretation of the word ‘including’ in the Presidential Order.

125. Before us, a considerable amount of additional learning is cited, including by Mr Gangal. It is not necessary to consider every one of these. We must however refer to a more recent judgment of a Full Bench of this Court in *Maroti & Ors v Deputy Director & Member Secretary, Scheduled Tribe Caste Scrutiny Committee & Ors*.¹⁸

17 (2006) 4 SCC 98.

18 2023 SCC OnLine Bom 1991.

The issue before the Full Bench also related to the question of permissibility of such an enquiry. The authorities that we have noticed were among those cited before the Division Bench.¹⁹ The Full Bench judgment is undoubtedly binding on us. One of the questions it considered was whether such an enquiry was even permissible. This is set out in the second portion of paragraph 51 just above paragraph 52. The decision in *Bhaiya Lal* was also considered.

“51. In *B. Basavalingappa Vs. D. Munichinnappa* (supra) the Constitution Bench, was considering a plea as to whether it was open to make any modification in the Presidential (ST) Order 1950 by producing evidence to show inclusion of any caste in the entry made in the Presidential (ST) Order 1950. The entry in the Presidential (ST) Order 1950 was of the Caste ‘Bhovi’, as against which what was claimed, was that it was the same as the caste ‘Voddar’. The ratio in *B. Basavalingappa Vs. D. Munichinnappa* (supra) is spelt out in para 6 thereof which is as under:

“6. *It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be accepted that wherever on caste has another name it has been mentioned in brackets after it in the Order: (See Aray (Mala), Dakkal (dokkalwar) etc.]*

19 It is perhaps a testimonial to the robustness to our judicial system that before the Full Bench, Mr Anturkar was canvassing precisely the opposite of what he urges before us today. Mr Anturkar’s submissions did not find favour with the Full Bench. We do not hold that against him.

Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily, therefore, it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the order.

52. The enquiry was conducted in the words of the hon'ble Apex Court, for the following reasons:

“7. ----- But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was meant by Bhovi is to take evidence in that behalf. It there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste . --

10. ----- As the President could not have included in the Order a non-existent caste, it means the word “Bhovi”, relates to some caste in Mysore as it was before 1956 and we have, therefore, to establish the identity of that caste and that can only be done by evidence. ----- We may again repeat that we have referred to the evidence in this case only because there was undisputedly no caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out, therefore, which caste was meant by the word “Bhovi” as used in the Order. But for this fact it would not have been open to any party to give evidence to the

effect that (for example) caste A mentioned in the Order includes or was the same as caste B where caste A does not exist in the area to which the order applies .”

53. It is thus apparent that in ***B. Basavalingappa Vs. D. Munichinnappa*** (supra), the entry of the caste ‘Bhovi’, was already in the Presidential Order and thus it was not a case where an enquiry was undertaken/permitted to include/exclude any caste or parts thereof. The enquiry was for the purpose of identifying the caste, listed in the entry, and not otherwise. Thus ***B. Basavalingappa Vs. D. Munichinnappa*** (supra) does not lay down any proposition that an enquiry is permissible in respect of a claim for inclusion of a caste in an entry in the Presidential (ST) Order 1950 and for that purposes evidence is admissible, as is sought to be contended.”

126. The finding at the end of paragraph 56 is put in these words:

“56. In ***Parsram Vs. Shivchand*** (supra) the question under consideration was ‘Is respondent 8 Kishan Lal a Hindu Chamar by caste which is a scheduled caste within the meaning of Part X of the Schedule to the Constitution (Scheduled Castes) Order 1950?’ The question was framed in the backdrop of a claim that the nomination of Kishan Lal was rejected on the ground that he belonged to the Mochi caste and that Chamar and Mochi were not two separate castes and the word “mochi” was applied to a Chamar who actually started working in leather and therefore the rejection was improper. According to the petitioner, Kishan Lal was a Hindu and being a Chamar by caste as he belonged to a scheduled caste within the meaning of para 2, read with Part X of the Constitution (Scheduled Castes) Order, 1950, issued under Article 341 of the Constitution, he had filed a declaration under Section 33 (2) of the

Representation of Peoples Act, stating his caste to be Chamar covered by Item 9 in Part X (Punjab) of the Schedule to the Constitution (Scheduled Castes) Order, 1950 which item had the entries as “Chamar, Jatia Chamar, Reghar, Raigarh, Ramdasi or Ravidasi.” In this background considering ***B. Basavalingappa Vs. D. Munichinnappa*** and ***Bhaiya Lal Vs. Harikishan Singh*** (supra) it was held thus:

“7. Before the learned Trial Judge, a good deal of evidence was adduced and arguments advanced as to whether the words “chamar” and “mochi” were synonymous and even if Kishan Lal was held to be a Mochi, there was no reason to exclude him from the fold of the caste of Chamars in which case his nomination paper was wrongly rejected. For this we have to refer to Article 341 of the Constitution under clause 1 of which the President may, with respect to any State or Union Territory, and where it is a State, after consulting the Governor of the State, by public notification specify the castes, races or tribes which shall for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be. This article empowered the President to specify not only the entire castes but tribes or parts or groups within castes, races or tribes which were to be treated as Scheduled Castes in relation to a particular caste. So far as Chamars and Mochis are concerned, it will be noted from a reference to the Constitution (Scheduled Castes) Order, 1950, that the President was not of opinion that they were to be considered to belong to the same caste in all the different States. For instance, in the States of Andhra Pradesh, Bihar, Gujarat, Kerala, Madhya Pradesh, Madras,

Maharashtra, Mysore, Orissa, Rajasthan and West Bengal, Chamars and Mochis were put on the same footing.

8. Before the Reorganisation of the Punjab Act of 1966, Item 9 of Part X of the Order specifying the Scheduled castes in the States read:

“Chamar, Jatia Chamar, Reghar, Raigar, Ramdasi or Ravidasi.”

9. After the reorganisation of territories and creation of new States by the said Act the Scheduled Castes Order was amended providing for the specification of Scheduled Castes for the new States and territories. The Constitution (Scheduled Castes) (Union Territories) Order of 1951, was also amended in 1966. As a result of the above changes, the final position with regard to the Scheduled Castes was as follows. Item 9 remained unaltered as regards the new States of Haryana and the Punjab. Chamars and Mochis were put in the same class as regards the Union Territory of Delhi and Himachal Pradesh, while the position in the Union Territory of Chandigarh remained the same as in the old States of Punjab. This shows that even when the subject of specification of Scheduled Castes engaged the attention of the President in 1966, he did not take the view that Mochis should be classed together with Chamars insofar as the States of Haryana, Punjab and the Union Territory of Chandigarh were concerned. It is also clear that the question of inclusion of Mochis in the Scheduled Castes was considered by him. Apart from this, there are two decisions of this

Court which conclude the point.

13. *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 their 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. Quite a lot of evidence was adduced orally and also by documents before the learned Trial Judge to show that Kishan Lal was a Chamar and not a Mochi. The learned Judge examined the evidence thoroughly, and we do not propose to do the same again. In his view Kishan Lal was Mochi and not a Chamar and we do not see any reason why we should come to any different conclusion.*

14. *Once we hold that it is not open to this Court to scrutinise whether a person who is properly described as a Mochi also falls within the caste of Chamars and can describe himself as such, the question of the impropriety of the rejection of his nomination paper based on such distinction disappears. In this case, Kishan Lal was found to be a Mochi and not a Chamar and*

therefore his nomination paper was rightly rejected. He tried to prove by evidence that he was a Chamar but he did not succeed therein. The appeal therefore fails, and is dismissed with costs.”

57. It was thus held that the question regarding an entry in the Presidential (ST) Order 1950, was not open to agitation by evidence and was one, the determination of which lay within the exclusive power of the President, it was not for the Courts to examine it and come to any conclusion regarding the same. Thus a claim of the caste ‘Mochi’, being synonymous with ‘Chamar’ caste was held not entertainable and no enquiry in that regard was held permissible.”

(Emphasis added)

127. *Mana Adim Jamat Mandal* was also referenced as was the decision in *Milind* and the decision in *Sonone*. The Court went on to hold in paragraphs 81 to 85:

“81. The contention therefore that *B. Basavalingappa Vs. D. Munichinnappa* and *Bhaiya Lal Vs. Harikishan Singh* (supra) create a green zone or window of interference to make an enquiry or let in evidence, which has been confirmed by the Constitutional Bench in *State of Maharashtra Vs. Milind* (supra) based upon para 7 of *B. Basavalingappa Vs. D. Munichinnappa* and para 28 of *State of Maharashtra Vs. Milind* (supra) as urged by Mr. Anturkar learned Senior Counsel and other Counsels supporting him, has to be considered in light of the above position, as well as the language used in para 28 of *State of Maharashtra Vs. Milind* (supra), which is quoted as under:

“28. Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments

aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer Question 1 in the negative.”

82. Though the first sentence in State of *Maharashtra Vs. Milind* (supra) reaffirms the ratio in *B. Basavalingappa Vs. D. Munichinnappa* and *Bhaiya Lal Vs. Harikishan Singh* (supra) the same cannot be read in isolation and will have to be read in light of what the latter part of the paragraph holds that no inquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any such tribe or tribal community is included within the scope, ambit and meaning of the concerned entry in the Presidential (ST) Order 1950 when it is not so expressly or specifically included, which in fact is the ratio in *B. Basavalingappa Vs. D. Munichinnappa* and *Bhaiya Lal Vs. Harikishan Singh* (supra). Thus an isolated sentence cannot be relied upon to contend that the ratio of the earlier two Constitution Bench decisions have been reaffirmed, without either looking to the background in which the statement has been made and the totality of the context in which it has been made.

83. That what is quoted in the latter part of para 28 in *State of Maharashtra v. Milind* (supra) is the ratio in *B. Basavalingappa v. D. Munichinnappa* and *Bhaiya Lal v. Harikishan Singh* (supra) is further elucidated from *State of Maharashtra v. Keshao Vishwanath Sonone* (supra).

84. In *State of Maharashtra Vs. Keshao Vishwanath Sonone* (supra) it has been clarified by the Hon'ble Apex Court that the ratio in *B. Basavalingappa Vs. D. Munichinnappa* was as stated in para 6 of the judgment and not para 7, and a similar argument as is been canvassed by Mr. Anturkar learned Senior Counsel and learned Counsels supporting him, has been turned down, which is further apparent from what has been stated in paras 48 and 49 of *State of Maharashtra Vs. Keshao Vishwanath Sonone* (supra):

“48. Shri Rohatgi, learned Senior Counsel appearing for the appellant has placed much reliance on AIR para 7 of the judgment [B. Basavalingappa v. D. Munichinnappa AIR 1965 SC 1269] and has contended that this Court approved the exercise undertaken by the High Court to find out which was the Bhovi caste, which was included in the Constitution (Scheduled Tribes) Order, 1950, hence, an evidence was rightly looked into by the High Court, which received approval by this Court. Shri Rohatgi further submits that although in B. Basavalingappa v. D. Munichinnappa AIR 1965 SC 1269] the factum that there was no caste in Mysore State before reorganisation known as Bhovi at all was not disputed but the fact that whether it is disputed or not disputed shall not make any difference, whenever the issue is raised that has been answered by the courts looking into the evidence.

49. The observations made by this Court in B. Basavalingappa v. D. Munichinnappa AIR 1965 SC 1269] in AIR para 7 in no manner dilutes the ratio of the judgment as laid down in AIR para 6 quoted above. This Court approved

the High Court exercise of looking into the evidence to determine which was the caste which was meant by the word “Bhovi” in the Order in the peculiar circumstances of the case where the fact was not disputed that there was no caste known as Bhovi in Mysore State before 1956. In para 7, these following two observations made by this Court are in full accord with the ratio as laid down in para 6, they are: (AIR p. 1271, para 7)

“7. ... It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in Mysore State as it existed before 1956. ... If there was a caste known as Bhovi as such in Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste.”

85. It is thus apparent that the ratio in the two Constitution Bench decisions in ***B. Basavalingappa Vs. D. Munichinnappa*** and ***Bhaiya Lal Vs. Harikishan Singh*** (supra), as clarified in ***State of Maharashtra Vs. Milind*** (supra) after taking into consideration all the judgments in between as indicated above, and as spelt out from ***State of Maharashtra Vs. Keshao Vishwanath Sonone*** (supra), is that no inquiry at all is permissible and no evidence can be let in, to find out and decide that any tribe or tribal community or part of or group within any such tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential (ST) Order 1950 when it is not so expressly or specifically included and in case any addition or deletion is to be made, that is within the sole domain of the Parliament

by enacting a law, in that regard in exercise of the powers under Article 342(2) of the Constitution.”

(Emphasis added)

128. This is therefore an unbroken line of authority going back to *Basavalingappa*. This is not a situation of looking at subsequent facts as sufficient ground for review. That would be an indirect way of doing that which *Basavalingappa* prohibits. There is no question today of looking at the Khillare family’s subsequent Affidavits of disavowals or the assumption of review jurisdiction by the scrutiny committee. It is difficult to understand how a 2023 Affidavit by any member of the Khillare family or a 2023 order or a show cause notice based on a 2023 vigilance report can now seek to dislodge school leaving certificates of 1952 and 1953. In any case, as the Division Bench of this Court has recently held, the scrutiny committee’s have no inherent power of review.²⁰

129. The submission on behalf of the PIL Petitioner is based on the 1951 census. This again proceeds on the footing that since ‘there is no Dhangad’ and there is only a solitary case of a Dhangar, therefore the two must be seen as one. But this does not explain the case of the Khillare family, all of whom got validity certificates precisely as Dhangads based on documents showing them to be Dhangads. The PIL also does not explain how it is possible to arrive at this zero-class determination by first taking evidence to see whether the class was in fact zero. In our view, that is entirely

²⁰ *Bharat Nagu Garud v State of Maharashtra & Ors*, and connected matters, 2023 SCC OnLine Bom 2597, per GS Kulkarni J.

impermissible. If this approach is to be adopted, then there will be never any end to a reopening of the correctness of every entry in the Presidential Order. We do not believe that is a sound or a reliable approach in a matter such as this.

130. At this stage, we note the submissions of Mr Gangal and Dr Warunjikar and in particular their reliance on paragraphs 8 and 10 of the Supreme Court decision in *Bhaiya Lal v Harikishan Singh*.²¹ The Supreme Court said that to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article 341, one must look at the public notification issued by the President in that behalf. The Supreme Court rejected the plea that though the appellant was not a Chamar as such, he could claim this status by saying that he belonged to the Dohar caste which he said was a sub-caste of the Chamar caste. An enquiry of this kind, the Supreme Court held, was impermissible in view of Article 341 and the decision in *Basavalingappa*. But in paragraph 10, the Supreme Court dealt with what we can only describe as a most remarkable submission, one that sought to limit the powers of the President in issuing such a notification at all, i.e., a question of Presidential competence.

10. **Mr Chatterjee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the States. His argument was that what the President can do under Article 341(1) is to specify the castes, races or tribes or parts thereof, but that must be done in relation to the entire State or the Union**

21 (1965) 2 SCR 877 : 1965 SCC OnLine SC 64.

Territory, as the case may be. In other words, says Mr Chatterjee, the President cannot divide the State into different districts or sub-areas and specify the castes, races or tribes for the purpose of Article 341(1). In our opinion, there is no substance in this argument. The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose

of issuing the public notification in question. Therefore, Mr Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Article 341(1).

(Emphasis added)

131. In *Palghat Jilla Thandon Samudhaya Samrakshna Samithi & Anr v State of Kerala & Anr*,²² the Supreme Court held that neither the State nor the Court could enquire into or let in evidence about the correctness of any entry of Scheduled Caste in the Scheduled Caste (Presidential) Order. It had to be applied as it stood, until it was amended by an appropriate legislation.

132. Dr Warunjikar in particular has put together a compact list of the propositions that emerge from these decisions. There can be no inclusion or exclusion except by an order of Parliament and no modification is possible once the list is being made. *Nityanand Sharma & Anr v State of Bihar & Ors*²³ also says that synonymous cannot be gone into. The *Bhaiya Lal* decision that we have referred to prohibits enquiry about sub-castes. No enquiries are possible for modifications in the list (*Milind; Palghat Jilha; Bhaiya Lal*); glossaries are not to be considered by the High Court: *Parsram & Anr v Shivchand & Ors*.²⁴ No additions or subtractions can be made by a Court: *Srish Kumar Choudhury v State of Tripura & Ors*.²⁵ A Court cannot expand its jurisdiction, tinker with the Presidential

22 (1994) 1 SCC 359.

23 (1996) 3 SCC 576.

24 (1969) 1 SCC 20.

25 (1990) Supp SCC 220.

Order, vary it, make amendments to it, exclude items from it or take evidence to interpret the entries as they stand.

133. The several judgments that have looked at case law after *Basavalingappa* all point to a single logical postulate. It is this. The Presidential Order is sacrosanct. It is inviolate. It cannot even be modified by a subsequent notification. Entries can be included or excluded only by an act of Parliament, viz., a legislation. The rationale for this is what we have set out above, namely, that in a country as diverse as ours, a legislation that, without creating a set of obligations and duties, demarcates an existing factual position, one arrived at after a complex process of study, research, and consultation. This is necessary so that further adjustments and provisions can be made for entitlements, benefits, reservations and various forms and manifestations of affirmative action. If these entries are to be constantly modified, changed, sliced, diced, chopped, minced, and julienned, there will only be resultant chaos in administration. No person will know whether a benefit that is available to her or him today is liable to be taken away by some executive or judicial fiat tomorrow. That person will not even know when this unfortunate event will happen or what the consequences are likely to be, or how this will affect past advantages and benefits availed. This is also not a question of only taking away of special benefits or privileges. It is also a question of demarcating boundaries, of defining which category or class is entitled to what particular benefit.

134. A classic case in point is in fact right before us in the form of this Khillare family. As we have seen, their Affidavits show that their caste certificates are not recent. Their validity certificates are also not recent. Only their disavowals are recent. It is entirely unclear to us what is to be done about all the many advantages these Khillares may well have received over time. It is easy for these persons to say that they will insouciantly face prosecution, but that cannot be an answer. Nor is it the end of the story. If a person has received a benefit on a certain basis, then somebody else has been denied that benefit. This is not a situation where there is no sufferer because of somebody accepting a benefit under a particular class or category reservation. What the Khillares seek is to say that for the consequences of their disavowals, ‘the law will take its course’, which is to say a long, seemingly endless, and labyrinthine meander — glaciers melt faster than litigation returns results — while they *immediately* gain a significant advantage by muscling into Dhangad reserved territory.

135. Their attempt only now to disclaim documents of 1952 and 1953 is even stranger, because it is these very persons who relied on those very documents to obtain their validity certificates. Even more curiously, the Affidavits filed in March 2023 *do not anywhere say that the school leaving certificates of 1952 and 1953 or the vigilance reports of that period were false, fabricated or in any way defective*. Instead, they actually rely now on documents that are against them (and apparently without jurisdiction), purportedly ‘reviewing’ earlier caste scrutiny validity certificates.

136. But the Khillare family has now spelt out its course. Its own affidavits leave us with no choice. These affidavits, and the supplementary submissions before us make it clear that the Khillares are now accepting the invalidation of their validity certificates. Therefore, on their own showing, they are not Dhangars, and are not entitled to validity certificates of themselves as Dhangars. But they are also not Dhangads, because they have now disavowed their Dhangad validity certificates. In short, the Khillares say they are Dhangars with documents showing Dhangad, which they say are false, on the strength of which they obtained validity certificates showing them as Dhangads, which they say are incorrect (so as to establish that the class of Dhangad was a zero-member one). They cannot on facts or in law now make a claim to being Dhangads. Therefore, the Khillares must lose all protection from both directions, as Dhangars and Dhangads. Prosecution must follow. Such are the perils of (mis)adventuring affidavits like these.

137. The personal aspect apart, these Khillare Affidavits themselves — and even without the documents that Mr Anturkar has referenced in Volume II of his compilation — prove the point *that the class was not empty*. For, self-evidently, if the class was empty there was no reason for the Khillares to make a single affidavit disclaiming membership of that class.

138. Mr Anturkar has correctly not stopped with accepting the affidavits of the Khillares and founding his arguments only on that basis. His compilation clearly shows the documents and the entries that were made decades ago prior to the 1956 Scheduled Tribe

(Amendment) Act. Those documents are not even mentioned in the Khillare Affidavits. All that we are told by the third generation Khillares is that the first and second generations were under some strong-and-wrong belief or strong-and-wrong impression. We do not know how a grandson can possibly speak to the 'belief' of his dead grandfather about an entry made in a school leaving certificate.

139. An interesting set of questions which we will only pose because the answer clearly suggests itself, is when, at whose instance, and for what purpose the Khillares awakened to this epiphany that all is *maya*: that everything they have obtained until now is only an illusion (or perhaps a delusion).

140. We have not understood the *Basavalingappa* case to be in any way an outlier or an exceptional case. We have read it to mean that it defines precisely unambiguously the extremely constricted circumstances in which alone a Court may and indeed is duty bound to step in and provide meaning. That circumstance is solitary: it only happens when the class is admittedly a zero-member class on the date of the first Order, because such a thing, i.e., a zero-member class, cannot be allowed to continue in a Presidential Order that, except for a Parliamentary legislation, is unalterable and immutable. But for that legislation, and that one narrow exception, the Presidential Order is carved in stone. That is really all there is to it.

141. We have not examined the evidence with a view to ascertaining the meaning of the entry. We cannot. We have only looked at what Mr Khambata has placed to show that the Dhangad

entry is a zero-member class. He has always accepted that if it is not a zero-member class, the Petitions must fail. The additional material produced by Mr Anturkar is only in response to the individual Affidavits filed by the Khillare family. We have not gone further than this. It is our view that we are not entitled in law to go further than this.

142. In light of this discussion, we have no hesitation in holding that Writ Petition No 4919 of 2017 is entirely without merit. It is dismissed. PIL No 135 of 2023 is also dismissed. The three individual Petitions transferred, and which assail the Caste Validity Committee's orders and required that certificates be issued as a Dhangad Scheduled Tribe are also all dismissed. The Tribal Rights Protection Committee Petition really only seeks a dismissal of the Public Interest Litigation and the Maharani Ahilyadevi Samaj Prabodhan Manch Writ Petitions. No separate orders are required in those Petitions. Accordingly, these Petitions are disposed in these terms. The other two individual Petitions also dismissed. In the facts and circumstance of the case there will be no order as to costs.

143. At this point, Dr Chandrachud makes a submission based on Article 132 read with 134A of the Constitution of India to say that a substantial and important question of law 'arises'. Therefore, we should grant certificate of leave to appeal, or something along those lines.

144. We disagree. That question of law *was* substantial. But it arose in 1965. It was decided then. It has been reaffirmed repeatedly. In

the present case, the same argument has been taken again and again, and repelled each time. There is not the slightest possibility of us acceding to this request.

145. Our thanks to appearing Counsel for their able assistance.

(Kamal Khata J)

(GS Patel J)