

PETITIONER:
SHRI HEIKHAM SURCHANDRA SINGH & ORS. ETC.

Vs.

RESPONDENT:
THE REPRESENTATIVE OF "LIOS" KAKCHING, MANIPUR (A SCHEDULED C

DATE OF JUDGMENT: 09/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL Nos. 14513-24 OF 1996
[Arising out of SLP (C) Nos. 8499-8505 of 1996]
O R D E R

Leave granted.

We have heard learned counsel on both sides.

These appeals by special leave arise from the common judgment of the Division Bench of the High of Guwahati, Imphal Bench made on November 17, 1995 in Civil Rule No. 800/94 and batch.

The admitted position is that when the President of India, exercising the power under Article 341(1) of the Constitution, had issued Scheduled Castes and Scheduled Tribes Order, 1950 "Louis" was declared as Scheduled Caste but not throughout the State. It was amended by the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1956 (53 of 1956) and Scheduled Castes Scheduled Tribes (Amendment) Act, 1976. Consequently, "Lios" came to be declared as a Scheduled Caste for the purpose of the Constitution in relation to the entire State of Manipur. We are informed that the total population of all Scheduled Castes including Lios in Tripura State is 16000. It would appear that after the residents of Kakching village belonging to "Lios" caste had obtained 2500 certificates showing their social status as Scheduled Castes for the purpose of the Constitution, it would appear that an issue as regards their status as Scheduled Castes gave rise to agitation by people residing in eight villages. A statutory Commission consisting of a retired High Court Judge, Justice V. Ibotombi Singh of Assam High Court and two other members, one of which was a sociologist, was constituted to enquire into the status of the members of Lois in the State of Manipur and to recommend as to who were the persons among them entitled to the benefit of the status of Scheduled Castes under Article 341 and also to suggest remedial steps in that behalf. Pursuant thereto, a report was submitted by the Commission on February 28, 1993 after detailed survey of the issue and enquiry. In that report, the Commission pointed out in paragraph 25 as under:

"on the other hand, the members of

the Loi community living in these villages other than the 8 (eight) villages mentioned above did not claim themselves to be members of the Scheduled Caste for more than 3 decades. Hence, it is our irresistible conclusion that the expression loi in the President's Notification included only the Loi population living in these 8 (eight) villages, Sekmj (Awang), Phayeng, Khurkhul, Koukruk, Laimaram, Kwatha Laimaram Khunon (Jairenpokpi) and Andro."

In paragraphs 50 to 57, the Commission had recorded its conclusion as under:

50. Admittedly, these 10 villages viz., Kakching Khullen, Pallel, Waikhong, Kakching Khunou, Chairel, Wangoo, Sagnu, Moirang, Khamaran and Thanga plus 16 others villages of this State were historically Lois in the true connotation of the term like those specified 8 Scheduled Caste Loi villages. Certainly, caste system has not be working in Manipur as strictly as in the rest of the country. Yet, consequent upon the mass conversion of the Meitei into Hinduism since the 18th century, caste, the backbone of all Hindu social orders, system in a way whatever different it may be from cases in the rest of the Hindu world. In fact, the uniqueness of Hindu caste system lies in its differences from one region to another and even within the same region. As a corollary of the new social order organised on the caste line, the chunk of people who had been Excommunicated from the social mainstream under the designation Lois came to be treated as being enter or to the caste Meitei society. Mention may be made here that many of the prisoners and social offenders exiled to the Loi villages had been Hindu converts and as such through them the original Loi villagers were brought under the minimal influence of Hinduism. However, on ground of being Lois by birth and by banishment, this class of people formed a distinct population of local exterior caste whose relationship with the caste Meiteis was markedly characterised by the taboo of inter-marriage and co-dinning.

51. Probably, peculiar of the local caste system, and the same time, the erstwhile Loi villages that had

been subjected to the stigma of untouchability were again gradually absorbed into the Meitei body social on the condition of their conversion into Hinduism with the necessary approval of the them kings. What remain have been those 8 villages covered by the Scheduled Caste Lois. The peoples in this lot of 8 (eight) villages are till date taken together traditional customs and practices of manufacturing country and practices of manufacturing country liquor, drinking it and relishing part, as a collective way of cultural life, though, to be candid, they also practice since long some of the superficial cultural traits of Hinduism after the model of the Meitei, rather in the mode of fashion.

52. All this unmistakably speaks eloquently of the differentiation and, for that matter, categorisation, in later part of history of the Lois into two distinct classes that one observes today in the contemporary larger Meitei society. Most probably, well cognizant of this fact of dichotomy of the Lois, Shri P.C. Methew, Chief Commissioner to the Government of Manipur recommended the names of only those specified 8 (eight) villages for inclusion in the list of Scheduled Castes at the time of revision of the said list in 1956.

53. Crucially needful to the above point, it may be reckoned with the fact that Classification of a peripheral Hindu or Sikh people for recognition/inclusion in the list of Scheduled Castes rests on the indisputable, simple criterion of untouchability or near untouchability, a disabling condition resulting from the people's exterior, peripheral position in relation to the caste Hindu mainstream. Now, put to the test of this criterion the case of the other Lois than the Scheduled Castes Lois provides the Committee no rational point for its self justification of giving any suggestion to the authority concerned for consideration of recognition/inclusion of this class of people in point as members of Scheduled Castes. We take the privilege of passing this comment in so far as advised is sought by the Government of Manipur from the

Committee on the matter in issue. This class of Lois stands rather much closer to the caste Meitei pole of the Meitei-Loi social continuum.

54. What with the traditionally less strict feature of castism in Manipur as compared with its scene in the rest of the Hindu universe and what with the massive caste eradication programs undertaken by the Government of India on the strength of special provisions in the Indian Constitution, the dehumanising social situation of untouchability in this state of Manipur may be said to have significantly diminished in its magnitude now. The concept of Lois as a social institution as it worked in history during the days of the Meitei monarchs, too, is not now fully operative. Payment of tributes to the then Meitei Lords had been stopped with the British occupation and administration of Manipur. It is all administration of Manipur. It is all the more expected to be completely free from any such social complexes as involved in the historical Loi institution and the position of exterior castes in these days of democracy in our country. Repetition of the expression Lois as the name of a Scheduled Castes community is indeed shown of any idea of invoking the old institution of Lois it is sheerly for the administrative purpose of the Government of India in scheduling certain really Backward Classes for special protection of the people thereof, among whom the Lois of 8 (eight) specified villages of Manipur have been duly recognised as one.

55. Despite these facts of contemporary social situation of Loi castism of untouchability or near untouchability in Manipur, continuity of this phenomenon in its residual forms looms large till date. As a matter of fact, this lingering residue of history still works behind the fact of social distance standing between the so-called Lois and the core Meiteis, particularly in the matter of marriage. Owing to this reasons, cases of inter-marriage between the core Meiteis and persons from any of the eight villages the Scheduled Caste Lois are very few and far between, the frequency being thus

left far short of the expected quantum. Some such similar scene of social distance, in lesser degree undoubtedly, has been observed in the relationship of the core Meitei with the Lois of the other class, too, vis-a-vis the letter's assimilation into the socio religious order of the former, a scene that presupposes rather low position of this class of people in the local social hierarchy. Of late, inter-marriage of the meitei of higher social status with people of this class of erstwhile Lois have occurred, admittedly,; but, these are conditional of the educational attainments and affluent economic standings of the individual spouses from the latter group, and these too mostly when they settle at the urban areas. At the group level, however, they remain still, more or less, victimised under the old social stigma of looking down upon them.

56. It is in consideration of this relative social backwardness of this integral section of people of the caste Hindu Meitei society that it is hereby being suggested by the Committee with a humanistic and egalitarianist concern for the people in point to the Government of Manipur as an alternative course of action for the act of taking a decision over the issue, the idea of examining in the case of this class of people could be considered in favour of their recognition/inclusion in the list of Other Backward Classes, of course, within the parameters not only of their social backwardness but also their educational backwardness as so laid down in the Constitution of India for such purpose. It would be worthwhile to mention here that the Government of Manipur has not so far framed its State list of OBCs. In case of acceptance of this suggestion a separate elaborate inquiry is asked for to evolve an appropriate scientific methodology. If some or all, as the case may be, of the said class of Lois are found social and educationally backward by the test of the criteria set up by the acceptably adopted methodology, they may rightly be put, for administrative purpose, under the label "Other Backward Lois."

57. TERM NO. 3: "to give recommendation regarding validity

on an approximately 2500 certificates issued by the Deputy Commissioner, Thoabal during the period from March, 1992 onwards." While deciding term No. 2, we have already held that the term Loi mentioned in the President's Notification includes only the Loi population of the 8 villages, namely, Sekmai (Awang), Phayeng, Khurkhul, Koutruk, Laimaram, Laimaram Khunon (Tairenpokpi), Kwatha and Andro and that the expression Loi does not cover the Loi population of the remaining 26 villages. There is, therefore, no doubt that the Loi population of Kakching village are not included in the expression Loi mentioned in the President's Notification. It follows, therefore, that the Scheduled Caste certificates numbering about 2500 issued by the District Magistrate and his subordinate officers are not valid in the eye of law. Further, on perusal of the records, it is seen that the District Magistrate and his subordinate offices issued Scheduled Caste certificates arbitrarily without making proper inquiry as to the genuineness of the claims of the petitioners. It is to be noted here that the absence of proper inquiry would permit an inference that they were not even aware of the vital fact and that they mechanically proceeded to issue the certificates which would unmistakably indicate that there was non application of mind to the most relevant fact. Any order of this nature passed mechanically with application of mind of the competent authority) is liable to be set aside as invalid. The District Magistrate issued one such certificate in favour of one Rameshwar Singh (one of the 2500 certificate holders) on the basis of the direction of the Government of Manipur which was communicated to him by one Under Secretary without making any inquiry for his subjective satisfaction as to the genuineness of the claim. We have stated above and we repeat it again that while doing so, the District Magistrate was acting as a rubber stamp of the Government and therefore the certificate issued by him in favour of Rameshwar Singh is invalid. There is no dispute that the competent authorities to issue

Scheduled Castes certificate are District Magistrate, Sub Divisional Magistrate, etc. and not the Government of Manipur. Therefore, the district Magistrate could not issue the certificate in favour of Rameshwar Singh on the advice or direction of the Government without making any inquiry for his subjective satisfaction. It appears that the District Magistrate was quite ignorant of this simple legal position. The certificate purported to have been issued by the District Magistrate, Thoabal was, in fact, made by the Government of Manipur and the District Magistrate merely acted as the mouth piece of the Government and, therefore, the certificate issued by him in favour of Rameshwar Singh was invalid. After all, the power exercisable by the District Magistrate and his subordinate officers is a statutory power which can be exercised only by them. It appears that the District Magistrate, Thoabal has lost sight of this aspect when he issued the certificates."

The Government accepted the Commission's recommendations by its proceedings dated July 6, 1994 and acted upon the Report. In the meanwhile, directions were issued on June 30, 1994 that the caste certificates issued to the aforesaid persons from Kakching village would not be acted upon. Calling this action in question, writ petitions came to be filed. The High Court in the impugned order had held that the impugned order of the Government was not sustainable in the light of the Presidential Order. However, a direction was given that the Scheduled Caste Certificates issued to the inhabitants of Kakching area shall be subject to the appropriate legislation that may be passed on the basis of the enquiry report. As against the quashing of the order, the appeal arising out of SLP (C) No. 3408/96 was filed and as regards para 34, the respondents have filed the appeals arising out of SLP (C) Nos. 8499-8505/96. Thus, these appeals by special leave.

Shri R.F. Nariman, learned senior counsel for the appellants, contended that in view of the findings recorded by the statutory Commission appointed by the Government, though "Lois" has been declared as a Scheduled caste throughout the State, except the persons who really have the status of the Scheduled Castes or of Lois are inhabitants of the eight villages, namely, Sekmai (Awang), Phayeng, Khurkhul, Koutruk, Laimaram, Laimaram Khunon (Tairenpokpi), Kwatha and Andro, the people from other villages do not have the said status. In support thereof, he relies upon the report of I. Seshimeran Aier, Commissioner and P.C. Mathew, Commissioner appointed by the State Government to identify the Scheduled castes for the purpose of amending the list of Scheduled Castes before coming inhabiting in these eight villages alone are the members of the Scheduled Castes. Others, though historically Lois, were assimilated in the mainstream of the Neither Hindu society. Therefore, they are not entitled to the benefit of the status of Scheduled Castes for the purpose of the Constitution. But they

recommended to the Government for consideration of their social and educational backwardness after identification under Article 340 of the Constitution. This material does indicate that the Lois inhabiting in rest of 18 villages, though historically considered to be Lois, are, in fact, not Lois and they are not entitled to the status of Scheduled Castes. The High Court, therefore, was not right in quashing the notification issued by the Government.

Dr. Shankar Ghosh, learned senior counsel for the respondents, on behalf of 2500 recipients of social status as Scheduled Castes, on the other hand, contended that in view of the Presidential notification issued after the 1976 [Amendment] Act, declaring Lois is the State of Manipur as Scheduled castes, it is neither permissible for the State Government nor for the Court to subtract their status as Scheduled Castes by receiving any evidence from any source, whether laid by the parties or by the Commission. Therefore, the certificates issued to the persons in Kakching village are valid in law and that para 34 of the judgment of the High Court requires to be set aside and it does not warrant interference with the rest of the conclusions reached by the Division Bench.

In view of the respective contentions, the question that arises for consideration is; whether the view taken by the High Court is correct in law? This Court has considered the controversy in catena of decisions. Article 366(24) defines "Scheduled Castes" and Article 341(1) gives power to the President in respect of any State or Union Territory to identify the Scheduled Castes in consultation with the Governor of the State and issue a public notification specifying the Scheduled Castes for the purpose of the Constitution. The Scheduled Castes so specified, shall be subject to law made by the Parliament under Article 341(2) of the Constitution. The list of the Scheduled Castes thus published in respect of each of the State shall be final and conclusive.

The question whether Bhovi is a voddar caste, the latter having been declared by the Presidential notification to be a Scheduled Caste, had come up for consideration in B. Basavalingappa vs. D. Munichinnappa [(1965) 1 SCR 316]. The Constitution Bench considering the question had held that "the power was given to Parliament to modify the notification made by the President under clause (1). Clause (2) further goes on to provide that a notification issued under clause (1) shall not be varied by any subsequent notification, thus making the notification by the President final for all times except for modification by law as provided by clause (2). Clearly, therefore, Article 341 provides for a notification and for its finality except when altered by Parliament by law. Therefore, in view of this stringent provision of the Constitution with respect to a notification issued under clause (1), it is not open to any one to include any caste as coming within the notification on the basis of evidence - oral or documentary - if caste in question does not find specific mention in the terms of notification." This view was reiterated by another Constitution Bench in Bhaiyalal vs. Harikishan Singh [(1965) 2 SCR 877]. The question was reconsidered in Srish Kumar Choudhury vs. State of Tripura [(1990) 1 SCR 576]. Therein, the Laskar community claimed the status of Scheduled Tribes in Tripura State. The Presidential notification did not specifically deal with them by express notification but they claimed the status of Jamatia, Notia which is a Tribe notified by the President. Dealing with that question, this Court, after considering the above two Constitution Bench

judgment and other judgments, had held that as a result of the detailed enquiry made as to the economic status, the level of education and the necessity of protection, inclusion into or exclusion from the Order requires to be made by the President and, therefore, it is for the State Government to make necessary recommendations to the President for taking appropriate action whether Laskars would be included as Scheduled Tribes by appropriate amendment. In this behalf, until that was done, it was held that it was not permissible for the Court to receive any evidence to consider whether they are Schedules Tribes.

The question was also examined in Palghat Jilla Thandan Samudhaya Samrakshna Samityi vs. State of Kerala [(1994) 1 SCC 357]. Therein, another Bench of three Judges had held that Thandans in Kerala State were declared to be Scheduled Castes. The High Court directed an enquiry whether Ezhavas or Thiyyas are other Backward Classes (Tappers) are Thandans. This Court had held that the enquiry that was ordered by the High Court to find out whether there was community called Thandan distinct from Ezhava in Palghat District in areas other than the erstwhile Chittur Taluk and also in any other place in the erstwhile Malabar District, was not permissible to be made since neither the Court nor the State Government has any power to amend or subtract the list published by the President and, therefore, the direction issued by the High Court was not correct in law. Accordingly a direction was given to issue necessary certificates until the Order was amended by the Parliament. Unfortunately, it was not brought to the notice of the Court that they are Other Backward Class (Tappers) and, therefore, similar question was considered by this Court in Nityanand Sharma & Anr. vs. State of Bihar & Ors. [JT 1996 (2) SC 117]. Therein Lohars were not included in the Scheduled Tribes in the State of Bihar. They claimed the status of Scheduled Tribes. Lohars are only blacksmiths while Lohras are the Scheduled Tribes notified by the President. This Court had held that it was not permissible for the Court to consider whether Lohars are Lohras who are declared to be Scheduled Tribes. In Kumari Madhuri Patel & Ors. vs. Additional Commissioner, Tribal Development & Ors. [(1984) (6) SCC 241], a Bench of two Judges, to which one of us (K. Ramaswamy, J.) was a member had to consider whether Kolis, a Backward Class in Maharashtra would be declared as Mahadeo Koli, a Scheduled Tribe in Maharashtra. Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The tribe or tribal communities, parts, of or groups thereof have their peculiar traits. It was further held that Presidential declaration, subject to amendment by Parliament, is conclusive. No addition to it by way of declaration of castes, tribes or sub-caste, parts of or groups of tribes or tribal community is permissible. After an elaborate survey of the Constitutional purpose and the relative caste structures, customs, marriages etc. it was held that Kolis are Backward Class and Mahadeo Koli are Scheduled Tribes. The appellants therein being OBCs were held not entitled to status as Scheduled Tribes. The Court has no power to declare synonymous as equivalent to the tribes specified in the Order or include in or substitute

any caste/tribe etc. It would thus be clear that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe was in fact included in the concerned Schedule, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of to a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe. In *Valsamma Paul vs. Cochin University & Ors.* [JT 1996 (1) SC 571] by virtue of the marriage, the appellant a forward class claimed status of a backward class. The question arose: whether she could claim the said status by virtue of being married to a backward class (fishermen)? It was held that she was not entitled to the said status. The retrograde attempt to grab the benefit of and distributive justice to the targetted group was held to be prevented. It would thus be clear and we hold that until the Presidential notification was modified by appropriate amendment by Parliament in exercise of the power under Article 341(2) of the Constitution, the Presidential notification issued under Article 341(1) is final conclusive and it cannot be added to any caste or subtracted by any action either by the State Government or by a court on adduction of evidence.

The next question is: whether the Lois other than the Lois residing in the aforesaid eight villages are entitled to claim the status as Scheduled Castes. It is right, as contended by Dr. Ghosh, that so long as the Presidential notification remains unamended, everyone who is declared as Lois is entitled to the status of Scheduled Caste. But there is a peculiar factual situation prevailing in the State of Manipur as historically collected from the evidence by the two Commissioners appointed by the State Government before 1956 (Amendment) Act and also the latest Commission whose findings have been extracted hereinbefore.

C.M. Mathew, Commissioner had stated thus:

"The Lois are living in the valley and they take meat and liquor as the scheduled tribes but unlike the Scheduled Tribes when they die they are cremated. Socially the Lois are as little better than Yaithibis in the eyes of the caste Hindus. The Lois are backward and deserve special consideration from Government for the amelioration of their condition. I am, therefore, of opinion that should be included in the list of Scheduled Castes."

I. Shimaren Aiar, Regional Assistant Commissioner after recording evidence had stated in 1953 thus:

"The term 'Lois' means backward class. There are a distinct community, different in many aspects from the manipuri Meitei, and to a great extent similar to those of the hill tribes. They have been treated as untouchable for the following reasons.

1. The Lois are not allowed to enter the houses of the Meiteis (Manipuri Hindus).

2. The main occupation of the Lois are cultivation and distilling of country liquor.

3. Inter-marriage and co-dining between the Lois and the Meiteis are prohibited.

4. The Lois worship goddesses of nature.

5. The Lois cremate their deaths, in this respect they are akin to the Hindus."

It would thus be seen that the Lois who are Scheduled Castes have been subject to the disabilities mentioned by the two Commissioners, Aier and Mathews and accepted by the statutory Commission. In this behalf, Articles 17, (15(2) and 46 furnish the unimpeachable historical evidence of disabilities to which Scheduled Castes are subjected to and the Constitution aimed to remedy by distributive justice, equality of opportunity and the status with dignity of person in socio-economic and political democracy and to prevent their exploitation. They would furnish as guiding principles to solve the given problem. As stated earlier, the question is; who are entitled to the status of Scheduled Castes? It is not in dispute that though Lois residing in 26 villages other than the eight named villages mentioned hereinbefore, had not claimed the status as Scheduled Castes until March 1992, until the Commissioner of District Thoubal and his subordinates had issued the social status certificates, for the first time, only to the 2500 residents of Kakching; until then, too did not village, no other residents in other 17 villages have claimed the status as Scheduled Castes even after 1992 till date. This material has not been contradicted; nor can it be contradicted. The Commission had pointed out that at the direction of the Government one Rameshwar Singh was issued social status certificate as Scheduled Caste without any enquiry,. That would show the enormity of the misuse of the power to claim false social status.

Under these circumstances, though the High Court was right that until the amendment to the List has duly been made, the Lois would be entitled to the status of Scheduled Castes, before issuance of the certificate of status the competent officer should enquire whether the applicant is subjected to the disabilities which the Scheduled Castes have been suffering. All those who satisfy these criteria alone are entitled to the issuance of certificates until the amendment is duly made by the Parliament under Article 341 (2) of the Constitution. The High Court, therefore, was not right in the conclusion in paragraph 34 that though the certificates issued by the Commissioner including those 2500 certificate holders were valid, that would be subject to the law made by the Parliament. Any one who claims the status of Scheduled Castes should satisfy the same criteria indicated by the Commissioners until the amendment is duly made by the Parliament under Article 341(2) of the Constitution and an enquiry should be conducted in that behalf.

The State Government is directed to furnish to the President the report submitted by the Commission, referred to hereinbefore, and all other material for appropriate action by the Central Government by laying before the Parliament to effect necessary amendment under Article 341(2) of the Constitution.

The appeals are accordingly disposed of, but, in the circumstances, without costs.

JUDIS