

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 1st November, 2010*
Judgment Delivered On: 16th November, 2010

+ **W.P.(C) 4743/2008**

KENDRIYA VIDYALAYA SANGATHAN Petitioner
Through: Mr.S.Rajappa, Advocate

versus

SHANTI ACHARYA SISINGIRespondent
Through: Mr.M.P.Raju, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Shorn of unnecessary details, the facts leading to filing of the present petition are that on 03.03.1988 the respondent applied to the petitioner for being appointed as Primary Teacher against the Schedule Tribe quota. After sometime the respondent submitted caste certificate dated 22.06.1988 issued by Deputy Commissioner, Singhbhum, Chaibasa inter-alia recording that the respondent is the wife of one Shri Nawal Kishore Sisingi and belongs to Munda Tribe which is a recognized Scheduled Tribe. It may be highlighted that the certificate refers to it being certified that the petitioner belongs to the Scheduled Tribe 'Munda' being the wife of a man who belongs to the Tribe 'Munda'.

2. On 16.08.1988 the respondent got appointed as Primary Teacher under the petitioner against a post in the Scheduled Tribe quota.

3. After more than 15 years of the appointment of the respondent, Assistant Commissioner, Kendriya Vidyalaya Sangathan issued memorandum dated 27.05.2003 to the respondent. The same reads as under:-

“Whereas Smt. Shanti Acharya Sisingi has been appointed as Primary Teacher in Kendriya Vidyalaya Sangathan with initial posting at Kendriya Vidyalaya Tatanagar and Smt. Shanti Acharya Sisingi has joined her duties on 05.10.1988.

Whereas Smt. Shanti Acharya Sisingi, PRT is appointed to the post under Scheduled Tribe quota based on the Caste Certificate issued by Deputy Commissioner, Singhbhum, Chaibasa.

Whereas the certificate submitted by Smt. Shanti Acharya Sisingi shows & is issued as Wife of Sri Naval Kishore Sisingi as per Certificate dated 22.06.1988.

Whereas in accordance with the instructions issued by the Department of Personnel and Training and in accordance with the provisions of the Reservations and Concessions for Scheduled Castes and Scheduled Tribes, a person not belonging to SC/ST by birth will not be deemed to be a member of SC/ST by virtue of marriage with a person belonging to SC/ST. Similarly, a person belonging to SC/ST by birth will continue to belong to that category even after marriage with a person not belonging to SC/ST.

Now, therefore in view of above clarification given by Govt. of India, Smt. Shanti Acharya Sisingi is hereby directed to submit the Caste Certificate in the name of her father instead of husband within 02 months from date of receipt of this memorandum.”

4. In response to the aforesaid memorandum dated 27.05.2003, the respondent submitted a reply to the petitioner

inter-alia stating that on 16.02.1981 she got married to her husband Nawal Kishore Sisingi who is a member of Munda tribe and that the said marriage was approved by Munda tribe. She was accepted by the community. That in view of dictum of law laid down by the Supreme Court in the decision reported as N.E. Horo v Jahan Ara Jaipal Singh AIR 1972 SC 1840 and the fact that the respondent was married to a male person belonging to Munda tribe and that the said marriage received the approval of Munda tribe the respondent became a member of Munda tribe after her marriage. The relevant portion of the reply submitted by the respondent reads as under:-

“2. I was validly married with Mr.Nawal Kishore Sisingi, on the 16th day of February 1981 according to Munda customs and adopted the culture of the Munda Community and my marriage with Mr.Nawal Kishore Sisingi was duly approved and I was recognized as a member of Munda Community by marriage. In the said matter as to whether I have become a member of the Munda Community by my marriage with a Munda male, duly approved by the Munda Community, I have been advised to refer to the authority reported in A.I.R. 1972 Supreme Court at page 1840. The Hon’ble Supreme Court, in the above mentioned authority, at para 22, Page 1849, has held that once the marriage of a Munda male with a non-Munda female is approved or sanctioned by the Munda Panchayat (Prabha Panchayat), the female after the marriage will become a member of the Munda Community.....

3. Since after my marriage, I bonafidely and in good faith, believe that I have also become a member of the Munda Community by marrying a Munda male and adopting the Munda culture and hence I applied for the post under Scheduled Tribe quota.....” (Emphasis Supplied)

5. In view of the aforesaid reply submitted by the respondent, the petitioner sought a clarification from National Commission for Scheduled Castes and Scheduled Tribes

(herein after referred to as the "Commission") on the said matter. In response thereto, the Commission issued letter dated 02.09.2003 to the petitioner, relevant portion whereof reads as under:-

"....It is the guiding principle that no person, who is not a Sch. Caste or Sch. Tribe by birth, can become a member of SC or ST because he or she married a person belonging to SC & ST. Similarly a person who is a member of SC or ST would continue to be a member of SC or ST, as the case may be, even after his or her marriage with a person who does not belong to a SC or ST.

Hence, the claim of Smt. Shanti Acharya Sisingi that she belongs to ST (Munda) community by virtue of her marriage to a ST person is not genuine and valid as per the extant rules. She is not entitled to get any benefit as ST in service under the Reservation policy...."

6. In view of the afore-noted response received from the Commission, on 19.09.2003 Assistant Commissioner, Kendriya Vidyalaya Sangathan, Disciplinary Authority issued a charge sheet to the respondent for initiation of disciplinary inquiry against the respondent under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The charge framed against the respondent reads as under:-

"Article-I

Smt. Shanti Acharya Sisingi while functioning as Primary Teacher in Kendriya Vidyalaya Sangathan failed to maintain absolutely integrity and acted in a manner which is unbecoming of a KVS employee in as much as she misled the department by submitting a false Scheduled Tribe Community certificate (Caste certificate) on the basis of which she secured employment in KVS as Primary Teacher under ST category.

Smt. S.A. Sisingi, PRT has thus committed misconduct and contravened Rule 3(1)(i) and (iii) of CCS (Conduct) Rule, 1964."

7. Vide report dated 28.03.2005, the Inquiry Officer indicted the respondent of the charge framed against her. In a nutshell, it was opined by the Inquiry Officer that:- (i) in order to claim Scheduled Tribe status it was incumbent upon the respondent to establish that her marriage with Nawal Kishore Sisingi was solemnized as per customs of Munda community and that she was accepted as a member of Munda community by Parha Panchayat of Munda community and that the respondent failed to prove said two facts; (ii) no evidence was led by the respondent to establish that her marriage with Nawal Kishore Sisingi was solemnized as per customs of Munda community, on the contrary the marriage certificate produced by the respondent shows that the marriage of the respondent with Nawal Kishore Sisingi was solemnized at Church under Christian marriage laws; (iii) no evidence, oral or documentary, was led by the respondent to establish that she was accepted as a member of Munda community by Parha Panchayat of Munda community and (iv) the witnesses examined by the respondent to prove acceptance of her marriage by Parha Panchayat of Munda community namely Jorong Surin DW-1 and Binkas Ecke DW-2 were not trustworthy for the reason there were contradictions between their testimonies regarding the factum of existence of records of Parha Panchayat pertaining to acceptance of the respondent as a member of Munda community by Parha Panchayat.

8. At this juncture, it is most apposite to quote the following portion of the report of the Inquiry Officer:-

“On the basis of documentary and oral evidences adduced in the case as recorded and in view of the reasons given above I hold that since the C.O. could not prove that her marriage was solemnized under the customs of Munda Community and that she was

accepted in the Munda Community as a member by the Parha Panchayat which are the prime conditions to be accepted as a member of the Community, the Caste Certificate acquired by her on her misrepresentation of facts cannot be accepted as valid. Accordingly, I find the C.O. guilty of the charge framed against her.

However, I feel inclined to point out here that the present case might not have to be initiated had the anomaly in the Caste Certificate submitted by the C.O. more than a decade back in 1988 was properly got verified and clarification sought from the Certificate issuing authority before the appointment letter was issued to the C.O. who had produced the same.” (Emphasis Supplied)

9. After considering the aforesaid report dated 28.03.2005 submitted by the Enquiry Officer and the representation filed by the respondent against the said report, vide order dated 10.10.2005 the Disciplinary Authority held that the charge leveled against the respondent has been proved and inflicted the punishment of removal from service upon the respondent.

10. Aggrieved by the order dated 10.10.2005 passed by the Disciplinary Authority, the respondent filed an appeal before the Appellate Authority, which appeal was dismissed vide order dated 19.03.2007.

11. Aggrieved by the orders dated 10.10.2005 and 19.03.2007 passed by the Disciplinary Authority and Appellate Authority respectively, the respondent filed an application under Section 19, Administrative Tribunals Act, 1985 before Principal Bench, Central Administrative Tribunal, New Delhi.

12. After holding that in view of dictum of law laid down by Supreme Court in the decisions reported as Kumari Madhuri Patil v Additional Commissioner, Tribal Development (1994) 6 SCC 241, Director of Tribal Welfare, Government of AP v Laveti Giri (1995) 4 SCC 32, Lillykutty v Scrutiny Committee, SC & ST

& Ors (2005) 8 SCC 283 and Union of India v Dattatray 2008 (3) SCALE 235 that the only authority which is empowered under law to examine genuineness of the caste certificate is Caste Scrutiny Committee the Inquiry Officer committed a jurisdictional error in returning a finding upon the validity of the caste certificate submitted by the respondent and that the orders passed by the Disciplinary Authority and the Appellate Authority are also vitiated inasmuch as they are predicated upon the report submitted by the Inquiry Officer, vide judgment dated 13.03.2008 the Tribunal allowed the application filed by the respondent.

13. Aggrieved by the impugned judgment dated 13.03.2008 passed by the Tribunal the petitioner has filed the present petition under Articles 226 and 227 of Constitution of India.

14. In support of the present petition, the learned counsel for the petitioner submitted that the learned Tribunal had not correctly appreciated the ratio laid down by Supreme Court in the decisions relied upon by the Tribunal and committed an error in not examining the matter on merits and allowing the application filed by the respondent on the ground of scope of jurisdiction of the Inquiry Officer.

15. Per contra, learned counsel for the respondent supported the impugned judgment passed by the Tribunal.

16. Whether the Inquiry Officer committed a jurisdictional error in returning a finding upon the social status of the respondent?

17. In order to find an answer to the question posed above, we proceed to examine the decisions of Supreme Court relied upon by the Tribunal.

18. In Madhuri's case (supra) following guidelines were laid down by Supreme Court regarding procedure for issuance, scrutiny and approval of social status certificates:-

“13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional

or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt

of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

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

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

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

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the

parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

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

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

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

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

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

14. Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.”

19. In Laveti Giri's case (supra), Supreme Court reiterated the guidelines laid down in Madhuri's case (supra) regarding the procedure for issuance, scrutiny and approval of social status certificates.

20. In Lillykutty's case (supra), it was held by Supreme Court that while exercising jurisdiction under Article 136 of Constitution of India it cannot interfere with a finding of fact arrived at by Scrutiny Committee regarding the genuineness of a caste certificate except in cases where such finding is based on no evidence or is arbitrary or perverse.

21. In Dattatray's case (supra), it was held by Supreme Court that when a person secures appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated.

22. From the aforesaid, it is crystal clear that the only decision which may have some relevance on the issue in hand is the decision of Supreme Court in Madhuri's case (supra). Laveti Giri's case (supra) merely reiterates the guidelines laid down by Supreme Court in Madhuri's case (supra). Lillykutty and Dattatray's cases (supra) has no application whatsoever on the issue in hand.

23. Having examined the decision of Supreme Court in Madhuri's case (supra), we are afraid, it cannot be said that Madhuri's case lays down that the Inquiry Officer committed an error in returning a finding upon the social status of the respondent for the same was a matter which exclusively falls in the domain of Caste Scrutiny Committee. The guidelines issued by Supreme Court in Madhuri's case (supra) lays down

the procedure to be followed for issuance of fresh caste certificates or verification of caste certificates already issued by the authorities. By no stretch of imagination, Madhuri's case (supra) lays down that wherever the issue of correctness of a caste certificate comes up in question, no authority other than Caste Security Committee can enquire into the same. It appears that the Tribunal has been swayed by the guidelines Nos. (11) and (12) issued by Supreme Court in holding that no authority other than Caste Scrutiny Committee can examine the correctness of a caste certificate. The purport of said guidelines is that the finding arrived at by Caste Scrutiny Committee regarding genuineness of a caste certificate can only be assailed by way of filing a petition under Article 226 of Constitution of India before the High Court and that the said finding cannot be assailed in a suit or in any other proceeding.

24. In view of the aforesaid, we have no hesitation in concluding that the view taken by the Tribunal that the Inquiry Officer committed an error in returning a finding upon the social status of the respondent is palpably wrong.

25. The next question which has arisen for consideration is whether the respondent became a member of Munda community after her marriage with a male member of said community.

26. In the decision reported as N.E. Horo v Jahan Ara Jaipal Singh AIR 1972 SC 1840 a non-Munda woman married a male member of Munda community. The issue for consideration before Supreme Court was that whether said woman acquired the membership of Munda community after her marriage with Munda male. After examining various authoritative books on tribes and castes, it was held by Supreme Court that once the

marriage of Munda male with a non-Munda female is approved or sanctioned by the Parcha Panchayat of Munda community the female becomes member of the community. The relevant observations of Supreme Court are being noted hereinunder:-

“22. It appears to us, on a full consideration of the entire material, that the following matters stand established in the present case —

“(1) The Mundas are endogamous and inter-marriage with non-Mundas is normally prohibited.

(2) That a Munda male along with his family on marrying a non-Munda girl is often ex-communicated or outcasted.

(3) That the rule of endogamy is not so rigid that a Munda cannot marry a non-Munda after performing special ceremonies.

(4) That such marriages have been and are being sanctioned by the Parha Panchayat.

(5) That where a Munda male and his family are outcasted for marrying a non-Munda they are admitted to the tribe after certain special ceremonies are performed.”

23.From all this evidence it is proved that once the marriage of a Munda male with a non-Munda female is approved or sanctioned by the Parha panchayat they become members of the community. The contention of Mr Anthony that a person can be Munda by birth alone can be sustained only if the custom of endogamy is established without any exception. We have already held that the rule of endogamy has not been proved to exist in the rigid or strict form canvassed by Mr Anthony. That rule has not been strictly followed and the marriage of a Munda male with a non-Munda woman has been and is being approved and sanctioned by the Parha Panchayat. If a non-Munda woman's marriage with a Munda male is valid it is difficult to say that she will not become a member of the Munda tribe. The concept of a tribe is bound to undergo changes, when numerous social, economic, educational and other like factors in a progressive country start having their impact. It is noteworthy that a Hinduised Munda and a Munda converted to Christianity can inter-marry and conversion to Christianity has not become an obstacle in the way of such marriage among the Mundas. Mr Horo himself in all fairness affirmed that custom among the Mundas was not static but was dynamic and was changing. We do not

find cogent or weighty reasons for disagreeing with the view of the High Court on the points under discussion.

.....

25. We may also refer to Article 330 of the Constitution according to which the seats reserved for the Scheduled Tribes are to be reserved in the House of the People, inter alia, for members of these Tribes. Under Section 33(2) of the Act a candidate for a reserved seat has to file a declaration specifying a particular caste or tribe of which he is a member. Article 342(1) empowers the President to specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to the State or Union territory as the case may be. In Parts 1 to 12 of the Schedule to the Constitution (Scheduled Tribes) Order, 1952 are specified the tribes or tribal communities or parts of or groups within the tribes or tribal communities who are to be deemed to be Scheduled Tribes. Munda is one of such specified tribes or tribal communities. It can well be said that the term "tribal community" has a wider connotation than the expression "tribe". A person who, according to the strict custom of a tribe, cannot be regarded as a member of that tribe may well be regarded as a member of that tribal community. Where a non-Munda woman is married to a Munda male and the marriage is approved and sanctioned by the Parha Panchayat of that tribe and the marriage is valid she may not, on the assumption that the rule of endogamy prevails, become a member of the Munda tribe in the strict sense as not having been born in the tribe. She cannot, however, be excluded from the larger group, namely, the tribal community. The High Court has taken the view that the use of the term "tribal communities" in addition to the term "tribes" in Article 342 shows that a wide import and meaning should be given to these words and even if the respondent is not a member of the Munda tribe by virtue of birth she having been married to a Munda after due observance of all formalities and after obtaining the approval of the elders of the tribes would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile. Even without invoking the doctrine of domicile the respondent's marriage with late Shri Jaipal Singh who was a Munda having been approved and sanctioned by the Parha Panchayat of the Munda tribe it can well be said that she became a member

of the Munda tribal community. We have not been shown any infirmity in the reasoning of the High Court on this point. When a person, in the course of time, has been assimilated in the community it is somewhat difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions. (*Emphasis Supplied*)

27. In the decision reported as *Valsamma Paul v Cochin University* (1996) 3 SCC 545 the question for adjudication before Supreme Court was that whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption, or any other act, ipso facto becomes entitled to claim reservation under Article 15(4) or Article 16 (4), as the case may be, which question was answered by the Court in the following terms:-

“33.It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nation’s life by providing them opportunities and facilities.

34. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*²⁴ and *R. Chandevappa v. State of Karnataka*²⁵ this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to

entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

35. Further question is: Whether recognition by the community, as is envisaged by law and expressly recognised by this Court in *Mohan Rao case*³, would give the benefit of reservation?....

36. The recognition of the appellant as a member of the Latin Catholics would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the Forward Caste, had an advantageous start in life and after her completing education and becoming major, married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholics, a Backward Class. (Emphasis Supplied)

28. In the decision reported as *Sobha Hymavathi Devi v Setti Gangadhara Swamy* (2005) 2 SCC 244 the appellant who belonged to a forward community married a male belonging to Bhagatha community, a Scheduled Tribe. The issue for consideration before three-Judge Bench of Supreme Court was whether the appellant acquired the membership of Bhagatha community after her marriage. It was contended on behalf of the appellant that on the marriage of the appellant with a male member of Bhagatha community in the customary form of Bhagatha community, the appellant had been recognized as member of Bhagatha community and accepted as such by the members of that community, consequently the appellant must be taken to have acquired the membership of Bhagatha community. In support of said submissions, great emphasis was laid down by the appellant on *Horo's* case (supra). After

examining constitutional provisions and case law on the point, three-Judge Bench affirmed the view taken in Valsamma's case and overruled Horo's case to the extent it was held that where marriage of a female belonging to forward community with a male belonging to backward community is accepted by the members of said backward community the female acquires the membership of that community. The relevant observations made by the Court are being noted herein under:-

“....Even otherwise, we have difficulty in accepting the position that a non-tribal who marries a tribal could claim to contest a seat reserved for tribals. Article 332 of the Constitution speaks of reservation of seats for Scheduled Tribes in Legislative Assemblies. The object is clearly to give representation in the legislature to Scheduled Tribe candidates, considered to be deserving of such special protection. To permit a non-tribal under cover of a marriage to contest such a seat would tend to defeat the very object of such a reservation. The decision of this Court in Valsamma Paul v. Cochin University⁷ supports this view. Neither the fact that a non-backward female married a backward male nor the fact that she was recognised by the community thereafter as a member of the backward community, was held to enable a non-backward to claim reservation in terms of Article 15(4) or 16(4) of the Constitution.....The said reservations are also constitutional reservations intending to benefit the really underprivileged and not those who come to the class by way of marriage. To the extent the decision in Horo⁶ can be said to run counter to the above view, it cannot be accepted as correct.On a consideration of the relevant aspects, we are of the view that whether it be a reservation under Articles 15(4) or 16(4) or 330 and 332, the said reservation would benefit only those who belong to a Scheduled Caste or Scheduled Tribe and not those who claim to acquire the status by marriage, like the appellant in this case.....” (Emphasis Supplied)

29. In the decision reported as Anjan Kumar v Union of India (2006) 3 SCC 257 the question for adjudication before Supreme Court was that whether the offshoot of the wedlock between a tribal woman and non-tribal man can claim status of a Scheduled Tribe, which question was answered by the Court in the following terms:-

“Undisputedly, the marriage of the appellant’s mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or excommunicated from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to a Forward Class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practised by the tribals from time immemorial and accepted by the community of the village as a member of tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward Class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward Class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of constitutional goal.

.....

14. In view of the catena of decisions of this Court, the questions raised before us are no more *res integra*. The condition precedent for granting tribe

certificate being that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-tribal husband—Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability.....” (*Emphasis Supplied*)

30. From the aforesaid judicial decisions, the legal position which emerges can be summarized as under:-

I The wedlock of a Scheduled Caste/Scheduled Tribe male with a female belonging to forward community has no effect on the social status of the male.

II A female belonging to forward community and married to Scheduled Caste/Scheduled Tribe male cannot claim Scheduled Caste/Scheduled Tribe status unless she demonstrates that after her marriage she has suffered the disabilities suffered by the members of the community of her husband.

III The offshoot of wedlock between Scheduled Caste/Scheduled Tribe male and a female belonging to forward community can claim Scheduled Caste/Scheduled Tribe status for Indian society is patriarchal society where the child acquires the caste of his father.

IV The offshoot of wedlock between Scheduled Caste/Scheduled Tribe female and a male belonging to forward community cannot claim Scheduled Caste/Scheduled Tribe status unless he demonstrates that she has suffered the disabilities suffered by the members of the community of his mother.

31. Tested on the anvil of aforesaid legal position, the conclusion which results is that the respondent did not acquire membership of Munda community after her marriage with a male member of Munda community and consequently could

not claim status of Scheduled Tribe for there is not even an iota of evidence to show that the respondent suffered the disabilities suffered by members of Munda community after her marriage.

32. However, the matter does not end here.

33. In the decision reported as R. Vishwanatha Pillai v State of Karnataka (2004) 2 SCC 105 two appeals were jointly decided by Supreme Court. In the first appeal, appellant R. Vishwanatha Pillai was dismissed from Indian Police Service for it was discovered that he had secured appointment in the service on the basis of a false caste certificate which was obtained by him by playing fraud upon the authorities. One of the contentions advanced by the appellant before the Court was that keeping in view that he had rendered 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal of service to protect the pensionary benefits of the appellant, which contention was negative by the Court in the following terms:-

“It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and

rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud. (Emphasis Supplied)

34. In the second appeal, son of appellant R.Vishwanath Pillai in the first appeal was issued Scheduled Caste certificate in view of the fact that his father was declared as a Scheduled Caste at that time. On the basis of said caste certificate, the appellant got admission in an engineering college against a seat reserved for Scheduled Caste candidate. Before the appellant could finish the course, the fraud played by his father was discovered due to which the reason the caste certificate issued to the appellant was cancelled. Consequently, the admission of the appellant was cancelled and his name was removed from the rolls of the college. The appellant filed a petition under Articles 226 and 227 of Constitution of India challenging the action of the college in cancelling his admission, which petition was dismissed by the High Court. Feeling aggrieved by the judgment of High Court, an appeal was filed by the appellant before Supreme Court inter-alia contending that he had become ineligible to apply for

admission to any other professional course as he had become overage and that he had not made any false claim as to his caste but claimed Scheduled Caste status on the bona fide belief that his father is a Scheduled Caste. After considering the afore-noted factual matrix, the Court allowed him to take his degree with the condition that he will not be treated as a Scheduled Caste candidate in future either in obtaining service or for any other benefits flowing from the caste certificate obtained by him.

35. In the decision reported as Punjab National Bank v Vilas (2008) 14 SCC 545 the respondent was appointed in the appellant Bank against Scheduled Tribe quota in the year 1989 on the basis of a Scheduled Tribe certificate issued in his favour. Subsequently, the Scheduled Tribe certificate obtained by the respondent was invalidated by the Caste Scrutiny Committee. Vide order dated 04.02.2002 the appellant Bank terminated the services of the respondent, which order of termination was set aside by the High Court. In appeal, Supreme Court affirmed the decision of the High Court in the following terms:-

“The situation is no different in case of the present respondent. He also came to be appointed and/or promoted way back in the year 1989 on the basis of his caste certificate which declared him to be Scheduled Tribe. Ultimately, it was found that since a “Koshti” does not get the status of a Scheduled Tribe, the Caste Scrutiny Committee invalidated the said certificate holding that the respondent was a Koshti and not a Halba. I must hasten to add that there is no finding in the order of the Caste Scrutiny Committee that the petitioner lacked in bona fides in getting the certificate.....” (Emphasis Supplied)

36. From the afore-noted two judicial decisions, it is evident that a distinction has been drawn by Supreme Court between the persons who had secured admission or appointment on the

basis of false caste certificates obtained by them by playing fraud upon the authorities and the persons who had secured admission or appointment on the basis of caste certificates obtained by them on a bona fide belief that they are Scheduled Caste/Scheduled Tribe. In the former category, Supreme Court has refrained from exercising equity jurisdiction in favor of such persons and granting any relief to them whereas in the latter category Supreme Court has exercised equity jurisdiction in favor of such persons and granted concessions to them.

37. In the instant case, the appointment was not secured by the respondent by procuring the Scheduled Tribe certificate by playing fraud upon the authorities. A reading of the response issued by the respondent to the memorandum dated 27.05.2003 by the petitioner shows that the respondent had claimed the status of Scheduled Tribe on a bona fide belief that she acquired the membership of Munda community after getting married to a male member of said community, which belief to an extent was supported by decision of Supreme Court in Horo's case (supra). It is also noteworthy that the decision in Horo's case (supra) was holding the field and was not overruled at the time when the caste certificate dated 22.06.1988 was issued in the favor of the respondent or when she had applied to the petitioner for appointment as a Primary Teacher.

38. The laxity of the petitioner in appointing the respondent without checking the social status of the respondent and thereafter waking up from its slumber after 15 years and taking action against the respondent has worked to the great detriment of the respondent. Today the respondent cannot apply for appointment in any government school for she had

become overage. The fact that the petitioner was lax in appointing the petitioner and thereafter not taking any action against her for a period of 15 years has also been noted in the report of the Inquiry Officer.

39. In that view of the matter, we deem it appropriate to dispose of the writ petition maintaining the impugned order which has quashed the order of removal from service inflicted upon the respondent, requiring her reinstatement. However, we direct that the respondent would not be treated as a member of a Scheduled Tribe in future.

40. The petition is disposed of in above terms. There shall be no order as to costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

November 16, 2010
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