

# Leading Judgements on ST Community Certificate Issues



**Dr. Palla Trinadha Rao**

**A.P. STATE PROJECT MONITORING UNIT (LTR & PESA Act)**

**O/o Director of Tribal Welfare, Govt. of A.P.**

**VIJAYAWADA.**

**LEADING CASES ON ST  
COMMUNITY CERTIFICATE  
ISSUES**

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- Union of India and others Vs. Dudh Nath Prasad (AIR 2000 SC 525)
- V. Lalitha and another V. State Of Andhra Pradesh and Others (2005(1) ALD 688)
- Vajrakalaya Ramani Vs. Sub-Collector (AIR 1990 AP 271)
- Vikram Chandra Sanyasi Raju vs Commissioner of Tribal Welfare, Govt of A.P (WP NO. 21045 OF 2001)
- W.S.V. Satyanarayana Vs. Director of Tribal Welfare, A.P. at Hyderabad and others (1996 (1) ALT 170)

**Shamsher Singh Rawat, I.A.S.**  
Principal Secretary to Government




Social Welfare & Tribal Welfare Department  
**Government of Andhra Pradesh**

### Fore Word

The matter relating to the issuance of community certificates to persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes are governed by the AP (SC, ST, and BCs) Regulation of issue of Community Certificate Act 1993. This Act empowers the District Collector either suo moto or on a written complaint by any person to call for the record and enquire in to the correctness of the certificate issued. The connected Rules were brought out in the year 1997 for the effective implementation of the Act 1993.

There is a need to curb the issuance of false ST community certificates in order to protect the interests of genuine tribes. There are several judgments given by various High Courts and the Supreme Court regarding the issuance of ST community Certificates as well as in relation to the enquiry procedure to be followed for cancellation of false community certificates.

I appreciate the work of Dr Palla Trinadha Rao, Advocate & Researcher who has compiled the important judgments delivered by various High Courts and the Supreme Court on the issue of ST Community Certificates and I do hope that it will be useful to all concerned and will further the protection of the interests of the genuine member of the tribal community.

  
(S.S. RAWAT)  
22/4/2014



డి. చక్రపాణి, ఐ.ఏ.ఎస్ (రీటైర్డ్) డైరెక్టర్ జనరల్  
(ఏ.పి.హెచ్.ఆర్.డి.ఐ) & ఎక్స్ అఫిషియో సెక్రటరీ,



తేది : 06-03-2018

భారత రాజ్యాంగం 1950లో ఎస్టీలకు ప్రత్యేక ప్రతిపత్తి నిచ్చింది. మొదటి షెడ్యూలు ప్రకారం దేశమంతా 744 తెగలను 22 రాష్ట్రాలలో గుర్తించడం జరిగింది. ఇందులో 33 రకాల ఎస్టీలు ఆంధ్రప్రదేశ్ లో వున్నారు.

వీరి అమాయకమైన జీవితాలలో విశిష్టమైన సంస్కృతి మిళితమైంది. వీరి కోసం రాష్ట్ర కేంద్ర ప్రభుత్వాలు చాలా రకాల కార్యక్రమాలు నిర్వహించడం జరుగుతోంది. కానీ ఎస్టీ తెగలలోని నిరక్షరాస్యత వల్ల అనుకున్న విధంగా ఈ కార్యక్రమములు వారికి చేరువ కాలేకపోతున్నాయి. ఏ దేశంలోనైనా ఆ దేశ పాలనా లక్ష్యం ప్రజా సంక్షేమము, సమాజాభివృద్ధి దిశగానే వుంటాయి.

తదనుగుణముగా వ్యక్తులను జ్ఞానవంతులు గాను, అవగాహనపరులు గాను విచక్షణశీలురుగాను, కార్యశీలురుగాను తీర్చిదిద్దే శిక్షణాలయాలకు అదే ప్రధాన లక్ష్యంగా వుంటుంది. ఆ లక్ష్యసాధన దిశలోనే మా ఆంధ్రప్రదేశ్ మానవ వనరుల అభివృద్ధి సంస్థ (ఏ.పి.హెచ్.ఆర్.డి.ఐ) రాష్ట్రంలోని వివిధ విభాగాల్లో ఉన్న వ్యక్తులను విజ్ఞానవంతులుగా, పనివంతులుగా చేయడానికి నిబద్ధతతో బహుముఖ అధ్యయన శిక్షణాకేంద్రంగా పనిచేస్తూ వుంది.

మా కార్యచరణ ప్రణాళికలో భాగంగా సమాజంలో ఇప్పటికే ఇలాంటి కార్యక్రమాలు నిర్వహిస్తున్న వ్యక్తులు, సంస్థలతో అవగాహన ఒప్పందాలు కుదుర్చుకొని పైన చెప్పాకూన్న లక్ష్య సాధన దిశగా ఇతోధికమైన కృషి చేస్తున్నాము.

ఇదే పందాలో కొన్ని దశాబ్దాలుగా షెడ్యూల్డ్ తెగల అభ్యుదయానికి కృషి చేస్తున్న డా॥ పల్లా త్రినాధరావు గారితో కలిసి చాలా రకాల కార్యక్రమములు చేయడం జరుగుతోంది. ఆయన కృషిలో భాగంగా తయారైన ఈ పుస్తకం ప్రామాణికంగా మరియు ఉన్నతతలో ఎక్కువ సమాచారం షెడ్యూల్డ్ తెగల వారికి అందించగలదని భావిస్తున్నాము. నిబద్ధతతో పని చేస్తున్న డా॥ పల్లా త్రినాధరావు తో కలిసి ప్రజోపయోగకరమైన మరియు రచనలను, కార్యక్రమాలను చేయాలనేది మా కోరిక.

ఈ పుస్తకాన్ని రచనను మీరంతా శ్రద్ధగా అధ్యయనం చేసి వినియోగించుకోవాలని షెడ్యూల్డ్ తెగల యొక్క హక్కులను వారికి తెలియపరచుతూ మన వంతు బాధ్యతలను నెరవేర్చుతూ భారత రాజ్యాంగ లక్ష్య సాధనగా సంక్షేమ రాజ్య నిర్మాణ కృషిలో పాలు పంచుకోవలసినదిగా కోరుకుంటున్నాను.

డి. చక్రపాణి.

ఆంధ్రప్రదేశ్ మానవవనరుల అభివృద్ధి సంస్థ, జనరల్ అడ్మినిస్ట్రేషన్ డిపార్ట్మెంట్, బాపట్ల, ఆంధ్రప్రదేశ్

Gandham Chandrudu, IAS  
Director of Tribal Welfare,



Dt: 28-3-2018

The Tribal Welfare Department, Government of Andhra Pradesh is committed to check the fraudulent claims of ST certificates. The Tribal Research Institute is a wing of tribal welfare department, is involved in ST community certificates verification process. The Department is assisting the Scrutiny Committees constituted under the AP (SC, ST and BCs) Regulation of issue of Community Certificate Act 1993 and the Rules made there under in 1997. The issues coming to the notice of the Director of Tribal Welfare are being referred to the concerned authorities to conduct detailed investigations and take action on unmistakable instances of persons using forged certificates to procure government jobs, mostly in the quota reserved for Scheduled Tribe candidates.

The book on exclusively with the key judgements of various High Courts and Supreme Court will certainly help the members of Scrutiny Committees constituted under the Act 1993 and Tahsildars, Tribal Welfare authorities to understand the dynamics in the issue, and legal implications in the issuance of ST certificates as well as cancellation of fraudulent ST certificates. Dr Palla Trinadha Rao's effort to compile all the important judgements on the subject is appreciable. I hope that this book entitled "Leading cases on ST community Certificate Issues" will be useful to Tribal Research Institutes also.

A handwritten signature in blue ink, appearing to be 'Gandham Chandrudu', written over a circular stamp.

Gandham Chandrudu, IAS

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Government of Andhra Pradesh, **VIJAYAWADA.**

## **Introduction**

The incidences of persons not belonging to Scheduled Tribes snatching the reservation benefits of Scheduled Tribes spuriously claiming that they belong to Scheduled Tribes are increasing. Article 366 (25) of the Constitution of India refers to Scheduled Tribes (STs) as those communities, who are scheduled in accordance with Article 342 of the Constitution. The criteria to notify STs is not spelt out in the Constitution. Article 342(2) says that only the parliament is empowered to include in or exclude from the list of scheduled tribes any tribe or group within any tribal community notified by the President in accordance with article 342(1) . The Constitution (Scheduled Tribes) Order 1950 was the first order issued in exercise of the powers conferred on the President under Article 342(1) of the Constitution of India. This was amended by the Parliament with the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 108 of 1976.

To streamline the procedure for issuing the community certificates and scrutinising of fake community claims, the Government of India and State Governments have issued circulars from time to time and also brought enactments. The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act No. 16 of 1993) was enacted by the Government of Andhra Pradesh to regulate the issue of Community Certificates to persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes. The intention of the Act is also to check the issue of false community certificates and identify those who are fraudulently securing employment or seats depriving the genuine ST candidates.

In despite of all these, several persons continue to secure employment and educational benefits depriving the STs of their constitutional benefits. Various reports and orders of higher Courts have found that ineligible candidates are seeking admissions in educational institutions and appointments on the basis of false caste certificates.

There is a need to check this fraud by unscrupulous elements who provide or secure false community certificates and those who benefit from such false certificates. Once issued, the certificates will be in force till they are cancelled. Therefore the competent authorities have to scrutinise the claims for the ST certificate with great care and promptitude, and issue certificates only to the eligible. Improper enquiries and failures on the part of scrutinising authorities in following the principles of natural justice is facilitating ineligible claimants to secure false community certificates and corner the benefits.

The legal precedents firmly affirm that castes, once included in Presidential List, form a class. Any further classification of this class would be tinkering with the Presidential List and sub-classifying and redistributing reservation already made will be treated as unconstitutional and beyond legislative competence.

Issues concerning the community status of offspring's born out of tribal and non-tribals marriages are often raised. The executive orders and their related higher courts rulings are the basis for determining the status of children born out of inter-caste marriages. On the other hand, putting an end to legal controversy, the Supreme Court, answering whether a person belonging to a scheduled caste or scheduled tribe in one state can claim the benefits under the

Constitution in another state to which the person has migrated where they are not recognised under these categories,, the court said no.

A large number of cases have been filed in different High Courts across the country by those who have obtained certificates as ST seeking continuation of the benefits and public authorities or activists seeking cancellation of alleged 'fraudulent' ST certificates. This book endeavours to consolidate the key judgements of Supreme Court and different High Courts on the issuance of ST certificates and the role of courts and executive authorities in dealing with the community status issues of STs. The book aims to assist the tribal rights activists, lawyers dealing with ST community status issues and the executive authorities who issue the certificates to STs and check the spurious ST community certificates.

I would like to thank Sri SS Rawat, Principal Secretary to Tribal Welfare, Sri D.Chakrapani, IAS(Retd.) DG, APHRDI and Sri Gandham Chandrudu, IAS, Director of Tribal Welfare who have given their forewords for the book.

19-03-2018

**Dr Palla Trinadha Rao**

### **Acronyms and Abbreviations**

AILD	All India Law Digest
AIR	All Indian Reporter
ALD	Andhra Legal Decisions
ALT	Andhra Law Times
AnWR	Andhra Weekly Reporter
BC	Backward Class
CrI.	Criminal
DB	Divisional Bench
EAMCET	Engineering Agricultural and Medical Common Entrance Test
FB	Full Bench
GO	Government Order
HC	High Court
MLA	Member of Legislative Assembly
MP	Member of Parliament
MRI	Mandal Revenue Inspector
MRO	Mandal Revenue Officer
NOC	Notes on Cases
RDO	Revenue Divisional Officer
SC	Supreme Court/Scheduled Caste
SLP	Special Leave Petition
ST	Scheduled Tribe
TW	Tribal Welfare
WP	Writ Petition

**CHAPTER - I****PRESIDENTIAL NOTIFICATION OF ST LISTS-  
JURISDICTION OF COURTS AND EXECUTIVE  
AUTHORITIES****1) Presidential Notification is final and it cannot be challenged  
by filing cases in courts.**

Constitution of India, Arts. 341, 342 – Constitution (Scheduled Castes) order (1950). Para 1 – Constitution (Scheduled Tribes) Order (1950), Para 1 – Scheduled Caste or Scheduled Tribe - Whether a Caste or tribe is Scheduled Caste/Tribe – To be determined by looking to entries in order as they are – No enquiry can be held and no evidence can be let in to establish that Caste/Tribe. Its part or group not expressly included in Order Scheduled Caste/Tribe – Amendment, modification etc. of entry given in Order – Neither State Govt., nor Courts/ Tribunals have power. **(Bhaiya Ram Munda V. Anirudh, AIR 1971 SC 2533 and Dina V. Narayan Singh (1969) 38 ELR 212 (SC) Overruled).**

A five-judge Constitution bench of the Supreme Court held that it was not permissible to hold an enquiry to decide that any tribe or part of a tribal group within a tribe is included in the general name, even though it is not specifically mentioned in the concerned entry in the Constitution (Scheduled Tribes) Order 1950. The Supreme Court allowed the appeal of the Maharashtra government against the Bombay high court judgement on this issue. Milind got admission in a government medical college on the basis of a certificate issued by the executive magistrate that he belonged to 'Halba' scheduled tribe. His certificate was sent for routine verification to the scrutiny committee. It conducted an enquiry and found that

he did not belong to Halba tribe, but his family belonged to Koshti caste. It was also found that Koshti was an independent and distinct cast having no relationship or identity with Halba/Halbi Scheduled Tribe in the list. Following this, the Director of Social Welfare cancelled his certificate. He moved the high court which quashed the order cancellation. It said that it was permissible to enquire whether any sub-division of a tribe was a part of the tribe mentioned in the Scheduled Tribe Order. Therefore the state appealed to the Supreme Court. By the time the final judgement was delivered 15 years had elapsed and the youth had become a doctor. So the Supreme Court did not undo the advantage derived by him but ordered that he would not be entitled to any further advantage on the basis of the certificate.

The court formulated the principles thus: 1) it is not permissible to hold any enquiry 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 concerned entry in the Scheduled Tribe Order 1950. 2). The ST Order must be read as 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 order if they are not so specifically mentioned in it. 3) A notification issued under Article 342(1) specifying STs can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of it can be included or excluded from the list of ST under Article 342(1) only by Parliament by law and 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 ST specified in the notification under Article 342(1). 5). Decisions of the Supreme Court in *Bhaiya Ram Munda V. Anirudh Patra* (AIR



1971 SC 2533) and Dina V. Narayan Singh (1968) 38 ELR 212 were wrong in stating that enquiry was permissible. (**State of Maharashtra V. Milind AIR 2001 SC 393**)

**2) No court has power to give declaration against the Presidential Order.**

Constitution of India, Article 341(1) - Scheduled Caste notified by President of India – Scope of enquiry by Court – No Court has power to give a declaration as to the entries made in Presidential Notification under Article 341 (1) – Scope of enquiry by Court is limited to find out whether the caste claimed by candidate finds place in the Notification of the President. (**Sri. A Chinnappa Vs. Sri V. Venkatamuni and others ALD 1996(5) Supreme 142**)

**3) Claim to include ST List is not permissible through Court Order**

Some members of the Vimukta Jatis challenged the Constitution (SC) Order 1950, claiming that they should have been included in the Constitution (ST) Order 1950. The challenge was rejected by the Punjab and Haryana High Court.

**Facts:** The petitioners' case was that they belonged to the Vimukta Jatis which was known as criminal tribes during the British regime. The British passed the criminal Tribes Act, naming certain tribes as criminal. It was claimed by the petitioners that their ancestors were in fact Rajputs and they migrated from Mewar to different parts of the country in the 16<sup>th</sup> century and acquired a nomadic character. Those tribes did not cooperate with the British and because of the nomadic character became educationally and economically backward. In 1950, the two presidential orders were issued regarding SC/ST under Articles 342 and 343 and the Criminal Tribes

Act was repealed. The tribes were denotified and came to be known as Vimukta Jatis. They were treated as SC and were included in the 1950 SC Order. The petitioners argued that they did not have the characteristics of SC and they should be included in the 1950 ST Order. The government declared the criteria adopted for the classification and asserted that Vimukta Jatis did not belong to ST.

**Ruling:** The Court was in favour of including them in the ST Order, but it held that the SC order was not ultra virus on that account. Since the Vimukta Jatis were not backward on account of untouchables (one of the criterion for SC classification), they could not be included in the SC list, but should be included in the ST list. However, the SC Order could not be struck down merely on the ground that Vimukta Jatis were included in it. At best they can be deleted from the list. The order does not infringe upon the Constitution. The court urged the government to consider their deletion from the SC list and inclusion in the ST list. (**Buta Ram Vs. Union of India AIR 1983 Punjab & Haryana 230.**)

**4) Civil courts have no jurisdiction- Declaration by court unconstitutional.**

Constitution of India, Art.366 (24) R/w. Art. 341(1) of Presidential Notification – CPC 1908 Section 9- It is conclusive subject to amendment by Parliament under Art 341(2) and 342(2) - As per notification “ Kattunaicken” is not a ‘Scheduled Tribe’ but Scheduled Caste – However respondent obtained a caste certificate from the R.D.O. that he belongs to a Scheduled Tribe – On enquiry certificate cancelled – Respondent filed civil suit for declaration that he belongs to a Scheduled Tribe – Civil Courts gave a declaration – Declaration given by Civil Court is unconstitutional and

without jurisdiction – The Presidential Order prohibits the jurisdiction of the Civil Court – The Competent Authority (Dt. Collector) held an enquiry after giving as opportunity to the respondent to prove his case – Authority found the certificate to be wrong and illegal – The Courts would not lend assistance to perpetrate fraud on the constitution – Declaration given by Courts below illegal – Set aside – Appeal allowed. (**State of Tamilnadu and others Vs Guruswamy, AIR 1997 SC 1199**)

**5) Court cannot give declaration of social status as "Tribe".**

(A) Constitution of India, Arts. 342, 366 (25) – Scheduled Tribe – Lohars are other backward class and not Scheduled tribe – Court cannot give declaration of social status as a tribe or declare them as Scheduled Tribes orders (Amendment Act) (1976), S.4.

(B) Constitution of India, Art,348 – Scheduled Castes and Scheduled Tribes Orders (Amendment Act )(1976), S. 4 Sch. II, Part III – Scheduled tribe - Community 'Lohar' wrongly included as a Scheduled tribe in Hindi translated version. – Court should take judicial notice of Acts of parliament and interpret schedule in light of English version being an authoritative text of Act and second schedule. Evidence Act (1 of 1872), S.57 (**Nityanand Sharma and another Vs. State of Bihar and others AIR 1996 SC 2306**)

**6) Court cannot add or delete from Communities mentioned a ST in the Presidential Order**

Constitution of India – Article 338 and 342 – Constitution (Scheduled Tribes\_ Order, 1950 – Court cannot add to or delete from any community mentioned a Scheduled Tribe in the Presidential Order (**P. Neeraja and another. V. Union of India and ors, 1998 (2) ALD 532**)

**7) Civil Court has no jurisdiction to entertain declaration suits in relation to ST status.**

Constitution of India – Article 226 – Writ petition filed by the registered society formed to safeguard the persons belonging to Scheduled Tribes, questioning the appointment of the respondent basing on a false certificate of caste produced by him – Maintainable – The petitioner has locus standi to file the writ petition.

Constitution of India – Article 342(2) – Constitution (Scheduled Tribes) Order – No tribe can be treated as Scheduled Tribe unless it is specifically included in the order – No person can claim his caste to be of Scheduled Tribe either by process of comparison or equalization or by reason of having resided in hill/tribal area – A person whose caste has been declared as Scheduled Tribes in a State in which he was residing cannot claim the status of Scheduled Tribe in another State in which the said caste is not declared as Scheduled Tribe.

Civil Procedure Code, 1908 – Section 9 – Civil Court has no jurisdiction to entertain a suit for a declaration that the plaintiff belongs to a particular tribe or that the caste of a person, though not specifically included in the said Order – A decree passed in such a suit is nullity and does not operate as Resjudicata.

Evidence Act, 1872 – Section 44 – Principles on which the judgment or administrative order can be declared as void on the ground of fraud – Stated – The first respondent played fraud on Court and obtained appointment in the category of Scheduled Tribes basing on the decree obtained – Appointment cannot be sustained.

Constitution of India – Article 26- Alternative remedy – Delay and laches - First respondent is found to have played fraud on the Court in getting a decree stating that he belonged to

Scheduled Tribe – In the circumstances, it is not proper to relegate the petitioner to the alternative remedy under Act 16 of 1993 – Further, delay and laches on the part of the petitioner is no ground to dismiss the writ petition. (**Andhra Pradesh Scheduled Tribes Employees Association V. Aditya Pratap Bhanj Dev and others.**) (2001 (6) ALD 582 (FB))

**8) Suit for declaration of caste as SC not maintainable**

Constitution of India, Act, 341 (1) Constitution (Scheduled Castes) Order, 1950 – Reservation for scheduled caste – Benefit of availability – person laying claim to membership of certain scheduled caste, born of Christian parents – His parents also converted prior to his birth and ceasing to be members of scheduled caste – Person cannot claim to be member of scheduled caste – Suit for declaration as to his being member of S.C – Not maintainable. (**S.Swvigaradoss Vs Zonal Manager, F.C.I AIR 1996 SC 1182**)

**9) Notification of President is conclusive and final - High Court cannot interfere.**

Constitution of India, Arts, 342,226 – Scheduled Tribe – Claim for status of, by person Thakur by caste which is forward caste – Claim based on plea that ‘Ka Thakur’ and Ma Thakur’ are described as scheduled tribe in the state – Scrutiny committee applied affinity test and negative his claim as a ‘Ma Thakur’ or ‘Ka Thakur’ – High Court cannot interfere with findings of committee under Art.226 – The notification of President under Art.342 subject to Scheduled Castes and Scheduled Tribes Act, 1976, is conclusive and final. (**Civil Appeal No. 2537 of 1997 (arising out of S.L.P(C) of 1996 (CC7112/96), Ganesh Vs State of Maharashtra and others**)

**10) Election Tribunal Constituted under PR Act cannot decide the validity of Community Certificate.**

A.P Panchayat Raj Act, 1994 – Section 233 – AP (SC, ST and BC) Regulation of Issue of Community Certificates Act, 1993, Section 3 – Election Tribunal constituted under the Panchayat Raj Act cannot decide the validity of Community Certificate issued under 1993 Act – Petitioner got elected as Sarpanch in a seat reserved for Scheduled Caste having contested on the basis of the Caste Certificate issued under the 1993 Act – Election Tribunal cannot set aside the election declaring the said certificate as invalid. (**Andugula Vijayalakshmi V. District Collector, Krishna District and others 2003 (2) ALD 284**)

**11) Civil Court/Election Tribunal has no jurisdiction to go into correctness of the certificate**

A.P (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1992 – Section 17 – When once a certificate is issued under the Act declaring the community of a person, it is not open to the civil Court, much less for the Election Tribunal to go into correctness of the certificate.

A.P Municipal Council Rules or decision of Election Dispute, 1967 – Rule 2 (2) – Election petition filed on the ground that the elected candidate does not belong to Scheduled Caste – Except making bald statement that the elected candidate was wedded to Christianity, no particulars were given – The Tribunal went wrong in placing the burden of proof on the respondent and allowing the election petition. (**P. Aruna Devi V. Election Authority-cum-Commissioner, Adoni Municipality and Others 2002 (6) ALD 277**)

**12) Scope of enquiry by court restricted.**

Constitution of India, Article 341(1) - Scheduled Caste notified by President of India – Scope of enquiry by Court – No Court has power to give a declaration as to the entries made in Presidential Notification under Article 341 (1) – Scope of enquiry by Court is limited to find out whether the caste claimed by candidate finds place in the Notification of the President. (**Shri. A Chinnappa Vs. Shri V. Venkatamuni and others 1996(5) Supreme 142**)

**13) Notification is final for issuance of caste certificate:**

Constitution of India, Art.341 – Caste certificate – Issuance of – Sunri (excluding Saha) Caste notified as Scheduled Caste by President – Finding of fact that for over a century the petitioner’s family found to be Saha by caste – Scheduled Caste certificate issued to petitioner – Is unconstitutional (**Anil Kumar Bagdi Vs State of West Bengal -AIR 1996 SC 1728 (From: Calcutta)**)

**14) Presidential Notification is final.**

What can be done when a ST community is excluded from the benefits given to them under the Presidential Order? This case deals with such an instance.

**Facts:** The petitioner, a resident of Tripura, claimed that he belonged to Laskar community which has been treated as ST within the state. According to him, the government, without any justification, delisted the community from ST category and issued instructions to all authorities to follow them. The high court dismissed the writ petition. Therefore, he moved an appeal in the Supreme Court.

**Ruling:** The Supreme Court stated that the record before it showed that the community was treated as ST. However, there was no clear inclusion of the community as such in a

presidential order. The petitioner maintained that even in the absence of such specification, the community was enjoying the privilege as a sub-group under one of the notified categories. The Central Government informed the court that the representations made by the community to be included in the presidential order under Article 342 of the Constitution was being examined. The court said that if the community was not included in the presidential order, it would be open to the petitioner to take further steps available in law. But later, in AIR 1990 SC 991, the claim of the community was rejected after a review. The court said the presidential order excluding it was final. (**Satish Chandra Vs. State of Tripura AIR 1987 SC 1601**)

**15) Exclusive Jurisdiction conferred on Parliament to exclude or include from the lists of castes or tribes-**

Constitution of India, Art 341 (1) – Scheduled Caste – Identifying equivalent or synonyms sub-castes or sub tribes for being treated as scheduled castes state Govt. central government cannot undertake such exercise. The exclusive jurisdiction conferred on the parliament to include or exclude from the list the castes or tribes included in the presidential order. (**Padutheta Ramachandra vs. Union of India AIR 1996 Karnataka 282**)

**16) Inclusion of group by adducing evidence contrary to Presidential Order- Not permissible**

Social Status – Scheduled Tribe – Presidential Order – No community can be regarded as Scheduled Caste or Scheduled Tribe unless it is so specified in Presidential Order – No Community or group be added to the list therein by adducing evidence that it is a sub-caste or sub-group of the community



mentioned in the Order – ‘Manya Kapu’ community cannot be treated as a Scheduled Tribe. 1983 (2) ALT 121 – Followed.

Social status – Scheduled Tribe - Manya Kapu consequences of a person joining service as S.T by High Court (Single judge) and enjoying benefits as S.T for several years on that basis which judgment as overruled later by a Division Bench of High Court holding it to be not S.T – Entitlement of such person to enquiries – Appellant belonging to Manya Kapu not made any also representation that he was S,T – Govt. of India conveying approval and stating that steps were being taken to include it in next Bill before parliament – Right to be appointed and promoted to the reserved post accrued to appellant based on the then existing state of law though it is reserved subsequently – Held that appellant is entitled to equities to retain the present post – Caste certificate issued in his favour is no nest in the eye of law because of later Division Bench Judgment of High Court he is not therefore entitled to for the benefits in service S.T candidate – His offspring also not entitled to any benefits reserved for S.,T candidates – Appellant and his offspring not be treated as S.T for any purpose hereafter. **(I. B. Rajendra Prasad Vs. The Director of Tribal Welfare and another 1996 (2) ALT 862)**

**17) “Gowda Caste “is different from “Goudu- ST List”:**

**The AP High court delivered the following Judgement:**

The short but important question in this Writ Appeal is, whether the 1<sup>st</sup> respondent, Smt. Dasari Subbayamma, belonging to Gowda caste (a back ward class notified by the Government of Andhra Pradesh) becomes a member of a Scheduled – Tribe “Goudu” (notified as a Scheduled Tribe under Art 342 of the Constitution) by virtue of residing in an agency tract. If she is

a member of Scheduled Tribe as held by the learned single Judge, this appeal by the Government must be dismissed, if she is not, it must succeed. The matter arises under the Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959. The facts are clearly and elaborately stated in the order of the learned single Judge, and we shall state them only in so far as they are relevant for the question at issue.

- A. The 1<sup>st</sup> respondent (write-petitioner) is a resident of L.N.D Peta village in Polavaram Taluk, in West Godavari District. The village is situated in an Agency Tract. She purchased a land from a member of the Scheduled Tribe and she is trying to save the said purchase on the ground that she too is a member of scheduled tribe, "Goudu". (If she is not a member of a scheduled tribe, it is not in dispute, the sale in her favour is illegal and she had to be evicted there from). In proof of her assertion, she produced a certificate dated 20-7-1979 issued by the Tahsildar, Polavaram. It reads:-"This is to certify that Dasari Subbayamma wife of Rama Rao is a native of L.N.D Peta Village, Polavaram Taluk, and West Godavari District. She belongs to Kalalee (Gowada) caste which is included in the list of Backward Classes.

20-7-1979

Sd-/Tahsildar, Polavaram

The learned Single Judge has uphold the 1<sup>st</sup> respondent's contention that though she belongs to a backward class called 'Gowad (Kalalee), she must be deemed to have become a member of a Scheduled Tribe 'G', Goudu in as much as she resides within an agency tract. It would be appropriate to refer to the approach and reasoning of the learned single Judge. He first referred to the certificate produced by the 1<sup>st</sup> respondent, and then posed the question:

“It remains now to be seen whether she belongs to a Scheduled Tribe”

He answered it in the following words:-

“In the Regulation No. 1 of 1959 ‘Scheduled Tribe’ (is defined as to mean any tribe or tribal community or part of or group within any tribe or tribal community, or part of or group within any tribe or resident in the Agency Tracts and specified as such by a public notification by the President under clause (1) of Art.342 of the Constitution. The Constitution (Scheduled Tribes) Order was promulgated by the President in the year 1950. In the Scheduled we find certain communities as having been declared Scheduled Tribes. In 1956 there was a modification of the Order and category No. 4 reads as under:-

“4 in the Agency Tracts:

1. Goudu (Goud)
2. Nayaka
3. Valmiki”

The petitioner claims that she belongs to ‘Goudu’ Community. The learned Government Pleader contends that her caste is described in the sale deed as ‘Kalalee’. In the list of backward classes mentioned in G.O.Ms.No. 1793 dated 23<sup>rd</sup> September, 1970, we find in Group-B Gouda (Gamalla - Kalalee) as belonging to Backward Classes. This coupled with the certificate of the Tahsildar, makes it clear that ‘Kalalee’ as belongs to ‘Gouda’ community. Persons belonging to ‘Gouda’ residing in agency tracts by virtue of the Constitution (Scheduled Tribes) Order, as amended in 1956 have become members of a Scheduled Tribe. From the above discussion it is clear that petitioner belongs to ‘Gowda’ community and resides in an agency tract, viz., Lakshmi Narayana Devipet

and therefore she is a member of a Scheduled Tribe. Consequently, the transfer made by the 4<sup>th</sup> respondent, who is a tribal, is in favour of a tribal and not in favour of a non-tribal and therefore, it is not null and void....”

The correctness of this reasoning is called in question in this writ appeal preferred by the Government.

- B. Art 342 of the Constitution empowers the President of specify tribes or tribal communities, which shall be deemed to be scheduled tribes for the purpose of the Constitution. It would be appropriate to read the Article here:

**“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. (Emphasis added).
- (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 port 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’.

Accordingly, the President of India has issued the Constitution (Scheduled Tribes) Order, 1950. The Order, as Amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, being Central Act No. 108 of 1976, reads as follows:-

“In exercise of the powers conferred by Clause (1) of Article 342 of the Constitution of India, the President after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order, Namely –

1. This Order may be called the Constitution (Scheduled Tribes) Order, 1950.
2. The tribal or tribal communities or parts of or groups within tribes or tribal communities, specified in parts I to XII of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as members thereof resident in the localities specified in relation to them respectively, in those parts of that Schedule.
3. Any reference in this Order, to a State or to a district or other territorial division thereof shall be construed as reference to the State, district or other territorial division as constituted on the 1<sup>st</sup> May of 1976 “ (Emphasis supplied)

Then follows the Schedule, Part -I whereof pertains to Andhra Pradesh it is necessary to refer to certain entries in this Schedule.

Part – I They are:

“XXX            XXX            XXX

7. Goudu (in the Agency tracts)

XXX            XXX            XXX

18 Koya, Goud, Rajah, Rasha Koya, Lingadhari Koya  
(Ordinary), Kottu Koya, Bhine Koya, Raj Koya

XXX            XXX            XXX”

The Presidential Order made under Art. 342 of the Constitution is imported into the Scheduled Areas Land Transfer Regulation, 1959 by virtue of the definition of "Scheduled Tribe" constrained in clause (f) of Section 2, which reads:

- (f) 'Scheduled Tribe' means any tribe or tribal community or part of or group within any tribe or tribal community and specified as such in relation to the State of

Andhra Pradesh by a public notification by the President under Clause (1) of Art, 342 of the Constitution.

Article 15(4) of the Constitution permits the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Tribes. Similarly, Art, 16(4) permits the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State. Accordingly, the Government of Andhra Pradesh has issued G.O. Ms. No. 1793 dated 23.9.1970 reserving 25% of the seats in certain professional Colleges, and 25% of the posts in the State and Subordinate Services of the Government of Andhra Pradesh, in favour of backward classes, The backward classes are sub divided into four groups, called Groups 'A', 'B', 'C' and 'D'. A list of backward classes, group-wise, is appended to the G.O. In group – B, item 4 reads thus:-

4. "Ediga, Gowda (Gammala, Kalae), Settibalija of Visakhapatnam, East Godavari, West Godavari and Krishna Dist."

- C. It would immediately be seen that there is a tribe called 'Goudu' found only in the agency tracts of this State, and that there is also a caste called 'Gowda'(Kalalee) (also called

Goundla) found throughout the State. Both are not same; one is a tribe, unpolluted by, and outside the Hindu caste system, while the other is a caste (Shudras) within the blighted caste system. They cannot be interchanged or mixed up. A tribal society is a homogenous groups in their way of life, whereas the caste group in their way of life where as the caste groups are heterogeneous culturally. Tribal societies are more segmentary in nature; they view their societies merely as component autonomous groups, similar in function and status, whereas the caste societies are more organic in that each caste is a part of an organic whole; its member provide necessary specialized functions for the whole. Again, while the tribesmen consider their society held together by kinship bonds and do not insist on hierarchical ordering, a caste ('Jati') society maintains non-kinship relations with other castes in the society, the relations within which are arranged in an order of dominance and dependence; (see David G. Mandelbaum; Society in India – Vol. I. pp 578-579)

- D. It would be evident from a reading of Art. 342 of the Constitution that, the President is empowered only to "Specify the tribes or tribal communities or parts of or groups within tribes or tribal communities" which shall be deemed to be scheduled tribes for the purpose of the Constitution in relation to that State or Union Territory, as the case may be. It follows that only a tribe or tribal community, or a group therein, can be so specified. The Residential Order issued there under does not support to do more. It only specified certain tribes, tribal communities, or groups within tribes, as scheduled tribes in certain localities or States, as the case may be. The power conferred by Art 342 of the Constitution does not extend to converting the non-tribals into tribals even for the purpose of the Constitution. The power is merely to specify not to create

or covert. In other words, a person or a member of a backward class who does not belong to a tribe, tribal community or a group within the tribe or tribal community, cannot be specified by the President as a member of a scheduled tribe for the purpose of the Constitution, nor does the President purport to do so.

- E. Applying the above principles to the facts of this case, it must be held that the 1<sup>st</sup> respondent who, acceding to the certificate produced by herself, 'belongs to Kalali (Gowds) caste which is included in the list of Backward Classes' cannot become or be treated as, or be transformed into a member of a scheduled tribe, called 'Goudu'. Till 1950 – or for that matter, till 1956 she was admittedly not a member of Scheduled Tribe, called 'Goudu' she was only a member of a backward caste called Gowds (Kalalee) if so, even thereafter, she continues to be a Gowada. The Kalali (Gowda) Caste, to which she belongs, is entirely different and distinct from the Goudu tribe found in the Agency Tracts of this State. We are unable to agree with the learned single Judge that all the members of Kalali (Gowda) case, who belong to the "Shudra" (caste in the Hindu caste – system), automatically go out of their caste and the caste and system? Belonging to a tribe is a matter of birth: not of choice – nor a matter of law. The presidential order does not purport to do all this, and there are no reasons to attribute such a meaning of intent to it. Indeed, placing such a construction upon the Presidential Order would make it ultravires the powers of the President under Art. 342. We are of the opinion that the learned single Judge was not right in treating the Gowda caste mentioned in the list of backward classes, and the Goudu tribe in Agency tracts, as one and the same. Not only there are Goudus in the Agency tracts, as one and the same. Not only there are Goudus in the Agency tracts, mentioned under item 7 of the Presidential Order, but there is



also a separate tribal group, called Goud, mentioned under item 18 of the Presidential Order. Both of them are tribes, and not castes. In this context, it is well to remember that the Hindu Caste System has, fortunately, not percolated into their tribes or tribal communities. These tribes are entirely outside the caste system, even distinct and apart from the scheduled castes which shall now briefly refer to certain characteristics, customs and practices which mark off the Goudus (tribesmen) from Gowdas, who are plains people. The material set out hereinafter is mainly drawn from the celebrated treatises "Castes and Tribes of Southern India" by E. Thurston, Vol. II (pp. 253 (Gammala): 269 (Gouda), and 273(Goudo) and "The Castes and Tribes of H.E.H. The Nizam's Dominions" by Syed Sirajul Hasan, following characteristics, customs and practices of the Goudu Tribe, and Gowda Caste".

Goudas are mainly pastoral tribe found in scheduled areas of Srikakulam, Vizianagaram and Visakhapatnam district. (According to 1971 census, their population is 6,256). They are also found in the adjoining parts of Orissa State; their main occupation is breeding of cattle, they are conspicuous by their primitive traits, distant culture, geographical isolation, extreme backwardness, and shyness of contact. Besides rearing cattle, they collect tubers and roots and thus partly subsist by flora and fauna of the nature; they acquire their mates by capture, an institution which was prevalent in ancient times. They speak a corrupt form of Oriya; they are divided into totemic clans; they worship 'Sanku Devudu', 'Jakari Devata', 'Nishani Devata'. Etc. They live in forests, isolated from the main stream of the society. They are extremely backward, surviving at a mere subsistence level; besides breeding cattle, they also undertake slash and burn cultivation on hill slopes, men wear traditional style; the percentage of literacy among them is very

low; they are very shy of contacting others and whenever non-tribals approach them, they recede into forests.

As against the above, the Goudas ( a caste included in the backward classes who are also known as 'Gammala', Gamandla', Goundla', Kalalee, and Ediga) are mainly toddy-tappers and vendors of arrack, found throughout the former State of Hyderabad, and throughout the State of Andhra Pradesh. They are included as backward class under Group 'B', at serial No. 4 in the approved list of socially and educationally backward classes notified by the Government of Andhra Pradesh in G.O.Ms. No.1793, dated 23-9-1970.

There are no matrimonial or communal relations between the Goudus living in the Agency Tracts, and the Gowdas/Goundlas/Kalalis living in the plains throughout the State. They are two distinct groups with diversity of culture and way of living.

A Judgement of another learned Single Judge of this Court in G. Venkateswara Rao Vs. District Collector, Khammam (I) AIR 1985, Andhra Pradesh, 15 is brought to our notice, where the learned judge hold that G. O. Ms. No. 447, dated 10-7-1979 is beyond the powers of the Government. The learned Judge was of the opinion that 'it is not permissible to draw the distinction that the Gouda community whose occupation is toddy-tapping or the tribes who are cattle breeders should come within the particular enumerated item, or not .... The petitioner who belongs to the Goud community in respect of agency tracts is entitled to a certificate showing his community as a scheduled tribe within the meaning of item 7 of the second schedule to Act 108 of 1976; (amendment to the presidential order)...". The learned Judge purported to follow the bench decision of this court in Principal, Guntur Medical College vs. Panduranaga Rao (2) AIR 1983, Andhra Pradesh, 339; but,

we find that the said Bench decision merely stated that it is not permissible for the court to embark upon an enquiry about the possible sub-tribes and synonyms of a tribe not mentioned in the Presidential Order, in as much as the main object of the Presidential Order and the subsequent notification of the lists by the Parliament will be defeated if the parties are permitted to adduce evidence to show that unremunerated communities are also included in the list. We think that the judgement of the learned single judge mixes up the two distinct concepts and entitles. Viz., 'tribe' and caste Goudus and Gowdas and treats them as inter changeable which, in our opinion, is not correct.

- F. We are also of the opinion that the view taken in the judgement under appeal opens up a broad vista for mischief. Since the presidential notification does not say that the residence within the Agency Tracts should be with reference to a particular date or year, it would be open to all or any of the members of Gowada/Goundla/Kalali Community all over the State to set up a small residence, or purchase a small piece of land anywhere in the Agency tract and then claim that they are all members of 'Goudu' scheduled tribe. It would give rise to several anomalous situations. Or the two brothers, one would be a member of the scheduled tribe if he resides in an Agency Tract, and the other not a member scheduled tribe (but a member of backward class) because he resides outside an Agency tract. We are sure, the President when he issued the notification, or the Parliament who it amended the notification, could never have contemplated permitting such an eventuality, it is well known that members of 'Gowda' caste are spread all over the State and that, their main occupation is toddy tapping; that, they have got toddy tapping societies spread all over the State and that, some of them are very rich and big contractors, taking contracts worth millions of rupees. It would be curious

if such persons are converted into scheduled tribes overnight by simple setting up a residence anywhere in the Agency Tracts in the State.

G. For the above reasons, we are of the opinion that the 1<sup>st</sup> respondent who, according to her own certificate, belongs to Gowda caste (which is enumerated as one of the backward classes by the Government of Andhra Pradesh) is not, and cannot become, nor can she be treated as a member of the scheduled tribe 'Goudu'. Though, she is a resident of a village within an Agency tract.

The writ appeal is, accordingly allowed and the judgement of the learned single judge is set aside. (**Government of A.P Vs Dasari Subbayamma, AIR 1986 AP 154**)

**18) Goud community in Khammam district is not ST**

Scheduled Tribes Order, 1950, Entry 7 as amended by Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Act 108 of 1976), Agency Tracts Interest and Local Transfer Act 1917, Schedule Districts Act (XIV of ) 1874 the Laws Local Extent Act, (XV of ) 1874, and A. P. (Scheduled Areas) Land Transfer Regulation, 1959 – Expression “agency tracts’ in Scheduled Tribes Order – Ambit – ‘(Goud’ Community in Khammam District is not a Scheduled Tribe. (**The District Collector, Khammam & Others Vs. G. Venkataramana Rao & Others. 1988 (1) ALT 549**)

**19) Manyam Kapu is not synonym to Kondakapu- Deviation from Presidential Notification not permissible**

**The AP High Court delivered the following Judgement:-**

The Principal, Guntur Medical College, Guntur and the State of Andhra Pradesh represented by its Secretary, Medical and

Health Department, Hyderabad, the respondents in this Writ appeal. The Writ Petition No. 5317/82 is filed by one Y. Panduranga Rao, a minor represented by his father and guardian Y. Chalapathi Rao, challenging the objection raised by the first respondent, Principal, Guntur Medical College, Guntur stating that the petitioner who is a "Manyam kapu" cannot be treated as one belonging to Scheduled Tribe by the President as per the Constitution (Scheduled Tribes) Order, 1950 or the subsequent amendments there to and consequently he is not entitled to apply for reserve seats for the section of candidates for admission to First year M.B.B.S course in the Medical Colleges in Andhra Pradesh State. Our learned brother Mr. Justice Ramanujulu Naidu, by his Judgment dated dated 14<sup>th</sup> September, 1982, allowed the writ petition following an unreported Judgment of Obul Reddy, J, (as he then was) wherein it was held that Manyam Kapu was a synonymous term for "Konda Kapu" and consequently respondents are directed to treat the petitioner as a candidate hailing from scheduled tribes and declare results of admission on that basis. The State preferred the above appeal and canvassed the correctness of the Judgment of Obul reddy. J, contending in the main that once the community of Manyam Kapu is not found in the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 108 of 1976, no claims of any person can be considered and the Court has no power to enlarge the list published by the President. On the other hand the learned counsel for the writ petitioner contended that the Court has got ample power and jurisdiction to see whether a particular community, though not enumerated in the list as such comes within the meaning of the enumerated communities and for that position, he relied upon the Judgment of the Supreme Court in BRAIYA RAM Vs ABIRUDH which was followed by Obul Reddy, J., (as he then was).

It is true in catena of cases of the Supreme Court on this question, this Judgment struck a different note and hence we have to examine the question reviewing all the cases on the subject.

As this Judgment of ours affects the community in question we have directed the respondent – State to file a counter affidavit specifically indicating their stand on this question without simply relying upon the counter filed by the Principal, the first respondent in the case. Accordingly we have permitted the State Government to file in this appeal for the first time an additional affidavit clarifying their position in respect of this community and the writ petitioner filed a reply thereto. The stand taken by the Government in this counter-affidavit is that they have requested the central government to implement the Judgment of Obul Reddy, J., by including the Manyam Kapu in the list of Scheduled Tribes, but the Central Government did not accede to their request and hence the amendment act 108 of 1976 did not include this community of Manyam Kapu in the Schedule appended to the Act. Hence the plea raised by the State Government is, that once the Amendment Act does not include the community of the petitioner, no enquiry into the question whether any un-enumerated community also belongs to one of the communities enumerated in the Schedule appended to Act 108 of 1976 is permissible. The learned counsel for the respondent contended that though admittedly the State Government requested the Central Government to include this community as one of the Scheduled Tribes, there is no material placed before the Court to show that the Central Government applied their mind and specifically refused to include in the list of communities appended to Act 108 of 1976 and consequently the Court's power is not lost to find out considering the customs and other communal habits of Manyam

Kapu community, being the same and identical with that of Konda Kapu which is admittedly an enumerated community of Scheduled Tribes. For that purpose, he relied upon the Andhra Pradesh State and Subordinate Services Rules wherein Konda Kapu or Manyam Kapus are shown in Schedule I of the said rules as belonging to aboriginal tribes in the agency areas.

**1. AIR 1971 SC 2533**

- (1) Now the main question is whether this Court can enquire into the question whether a particular community is a scheduled tribe even though such community is not one of the communities enumerated in the list appended to the Constitutional (Scheduled Tribes) Order, 1950 or the subsequent amendments thereto.

Let us examine the constitutional provisions relating to the subject Articles 341 and 342 of the Constitution empower the president to issue notification specifying the communities of Scheduled Castes and Scheduled Tribes respectively. We are concerned with “Scheduled Tribes” Art. 342 read as follows:

“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 the 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) The 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”.

Article 366(24) gives the definition of “Scheduled Castes” and (25) gives the definition of ‘Scheduled Tribes’. The relevant definition of “Scheduled Tribes” reads as follows:

“(25) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution”.

As seen from Article 342, after the issuance of the notification under sub-clause (1), the Parliament alone has got power under sub-clause (2) to include or exclude from the list of Scheduled Tribe specified in a notification issued under clause (1) any tribe, community or part or group thereof and except by such legislation by parliament, the notification issued under sub-clause (1) cannot be varied by any subsequent notification. After the advent of the Constitution, two separate orders were issued one for the Scheduled Castes under Article 341 and another for Scheduled Tribes under Article 342. The Constitution (Scheduled Tribes) Order, 1950 and the Schedule appended so far it relates to the State of Andhra Pradesh may be noticed.

1. This order may be called the Constitution (Scheduled Tribe) Order, 1950.
2. The tribes or tribal communities, or parts of or groups of, or groups within, tribes or tribal communities, specified in Part I to XII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident



in the localities specified in relation to them respectively in those Parts of the Schedule.

3. Any reference in this order, except Parts IV and VII-A of the Schedule to a State or to a district or other territorial division thereof, shall be construed as a reference to the state, district or other territorial division constituted as from the 1<sup>st</sup> day of November, 1956; and any reference in Parts IV and VII-A of the Schedule to a State or to a district or other territorial division thereof shall be construed as a reference to the State, District or other territorial division, constituted as from the 1<sup>st</sup> day of May, 1960.
4. Throughout the State except Hyderabad, Mahabubnagar, Adilabad, Nizamabad, Medak, Karimnager, Warangal, Khammam and Nalgonda district:-

XXXXXXX

5. "Konda Kapus"

It is seen that by two subsequent enactments passed by the Parliament, this order was modified. The first Act is Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 63 of 1956. By virtue of that Act, as the preamble of the Act itself indicates, some new communities are included and some communities are excluded from the list of Scheduled Castes and Scheduled Tribes. The Scheduled Castes and Scheduled Tribes Orders (Amendment) 108 of 1976 has further modified the list. One of the objectives for the enumeration of this list is to re-adjust the representation of these communities in Parliament and Assembly Constituencies as such reservations are made under Articles 330 and 332 for these communities in the House of People and also Legislative Assemblies of the States.

It is clear that the enumeration of list under Article 342 and subsequent amendments to the said order of the President by the Parliament is intended to confer certain constitutional benefits on these communities. It is well to remember, as the Supreme Court observed in *R. Chitrlekha and other vs. State of Mysore and others* with reference to the backward communities and special reservation embodied in Article 15(4) “these provisions recognize the factual existence of backward classes in our country brought about by historical reasons and make a sincere attempt to promote the welfare of the weaker sections. They shall be so construed as to effectuate the said policy but not to give weightage to progressive sections of our society under the false colour of caste to which they belong”.

The finality of the Presidential Orders issued under Articles 341 and 342 and the power of the Court to enlarge the list in given case was examined by the Supreme Court in a number of cases and most of them arose out of election disputes. The earliest Judgement of the Supreme Court is one reported in *B. Basavalaingappa vs. D. Munichinnappa and others*. The election of the respondent to the Bangalore South Scheduled Castes Constituency was questioned on the ground that he was not a member of any scheduled caste as he belongs to “Voddar” caste but not “Bhovi” caste and consequently the election is void. The election tribunal set aside the election on the ground that the candidate does not belong to “Bhovi” community. On appeal to the High Court it was held that the respondent belonged to “Bhovi” community that the “Voddar” caste as such was not included in the Presidential Order and the “Bhovi” caste mentioned in the Presidential Order is no other than “Voddar” caste and consequently the appeal was allowed. Wanchoo, J., while confirming the Judgment of the High Court, held that “Clause (1) of Art. 342 of the

Constitution of India provides that the President may with respect to any 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 purpose of the Constitution be deemed to be scheduled castes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular caste is a scheduled caste or not and only those castes can be Schedule which are notified in the Order made by the President under Art 341 after consultation with the Governor where it relate to such castes in a State. “To the argument that notification once made is final and cannot be revised even by the President and hence it is not open to include or exclude any caste as coming within the notification on the basis of evidence, oral and documentary, it was observed :-

“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 part of Caste A and therefore, must be deemed to be included in Caste A. It may also be accepted that wherever one caste

**2. AIR 1964 SC 1823**

**3. AIR 1965 SC 1269**

**(Principal Guntur Medical College Vs V. Pandurangarao - 1983 (2) ALT 121)**

**20) Notification of ST community matters in tribal and non tribal land disputes**

Land Transfer Regulations Prohibit sale of land by a tribal to a non-tribal. At the time of sale in 1951, the Nayaka caste, to which the Petitioner’s Vendor belongs, was not notified as a

Scheduled Tribe. Said caste was included as a Scheduled Tribe only under the Scheduled Caste and Scheduled Tribe Modification order of 1956. Said order has no retrospective effect. Hence transfer not void – Sale upheld. Respondents to grant Patta in favour of Petitioner. (**Ambati obi reddy Vs. The Commissioner of Survey, Settlement & Land Records, Hyderabad and others; 1996 (2) An. W.R.516**)

**21) Different Entries in the List- Mana community has no affinity with Gond ST.**

“Kshatriya Bidwaik Mana” Community, held, has no affinity with “Gond” community and does not fall within Entry 18 of Part IX of the Schedule to the Constitution (Schedule Tribes) Order, 1950 (as it stood in 1997) – Constitution of India, Articles 332, 366(25) and 342 – Representation of the People Act, 1951, Section 5(a).- In this case, the defected candidate successfully challenged the election of the winning candidate, alleging that he did not belong to the tribe as he had declared in the nomination papers.

**Facts:** The parties to this case contested from the Armori Constituency reserved for ST. Dadaji secured the largest number of votes and was declared elected. He had declared himself to belong to “Mana” community, which was ST, after the election the candidate who got the next highest number of votes filed an election petition before the Bombay High Court. One ground was that Dadaji did not belong to ST, and therefore, he appealed to the Supreme Court.

**Ruling:** The Supreme Court upheld the High Court judgement, Kshetriya Bidwaik Mana Community is not a tribe mentioned in the Schedule to the Constitution (ST) Order 1950, amended in 1976, Mana Community referred to in the schedule is a sub-tribe of ‘Gond’. Therefore, a person belonging to

Kshetriya Bidwaik Mana is not eligible contest election in the reserved constituency. If Parliament had intended to treat persons belonging to Kshetriya Bidwaik Mana also as ST, it would have mentioned Mana under an independence entry.

A reading of the schedule to the order shows that there are two communities with the same name, one having affinity with tribe and the other not having anything to do with such tribe and both are treated as ST, the community which has affinity with another tribe is shown along with it in the same group against a single entry and the other is shown against a different entry, the judgement pointed out. (**Dadaji Vs . Sukhdeobabu AIR 1980 SC 150**)

**22) Castes or Tribes mentioned in the Presidential Notification is final- Exercise on synonyms of castes or Tribes not permissible.**

Constitution of India, Art.341 – Scheduled caste – Appellant belonging to Caste Mondy/Mondigaru – Said caste not mentioned in notification issued by President as a amended under Act – Appellant cannot be considered as Mundala – A scheduled caste synonym for purpose of election to legislative assembly – His election on reserved seat rightly set aside. Representation of the People Act (43 of 1951), S.100 (**A. Chinnappa Vs. V. Venkatamuni and others.**) (AIR 1997 SC 248 (From: Karnataka))

**23) Social Status not on the basis of religion but on the communities and regions they inhabit.**

Constitution of India, Articles 341 & 342 – List of Scheduled Castes and Tribes Published in regard to Kerala State – Scheduled Tribes Constituted not on the basis of the religion they profess, but on the communities and the regions where

they inhabit. (**Rosamma Thomas and others Vs C.I. of Police.**)(2000 (1) ALT (Crl.) 79). (Ker).

**24) Caste claim in deviation of ST List- Rejected**

Constitution of India, Art. 226 – Caste claim – Invalidation of by Scrutiny committee – Petitioner belonging to ‘Mana Community which is claimed to be sub tribe of “Gond”, hence scheduled tribe – Material placed on record to show that he belongs to ‘Mana’ community ‘ Not sufficient ‘ No evidence that it has affinity with ‘Gond’ tribe – Rejection of caste claim – Not illegal .Constitution (Scheduled Tribes) Order (1950), Sch, Part IX, Entry 18 , AIR 1980 SC 150, Relied on- (**Kunda Vishwanath Ghodmare V. Committee or Scrutiny and Verification of Tribes Claims, Nagpur and others. AIR 2001 BOMBAY 150**)

**25) Inclusion of Nomadic tribe from Sindh, in BCs List of Maharashtra: Court asked Govt. to conduct survey.**

Here the question was whether a nomadic tribe from Sindh had a claim to be included in the Maharashtra list of backward classes. Sindh was part of the Bombay Presidency before Independence.

**Facts:** The petitioner challenged the decision of the Caste Scrutiny Committee holding that she had failed to prove that she belonged to ‘Bawa’ tribe in Maharashtra. She claimed that she belonged to Hindu Bawa nomadic tribe, which was originally recognized as ‘Other Backward Class’ in Sindh, West Pakistan. After partition, members of the Sindhi Community migrated to India. They migrated with their traditions and castes. Therefore, they had social and ethnic links with Gosavi or Bawa community notified by the Maharashtra government as nomadic tribe. Even after

migration, the caste remained unchanged, it was argued. On the other hand, the government argued that whether it wanted to include any caste or tribe from Sindh, a specific mention had been made on that behalf. The Bawa Community was not in any way ethnically connected with communities known as Bawas, Bairagis or Gosavis from Maharashtra.

**Ruling:** The Bombay high court set aside the order of the Scrutiny Committee and asked it to decide the issue afresh. The judgement stated that there was no doubt that Sindh was part of the Bombay Presidency. Merely because some tribes from Sindh were mentioned in the notified list, it did not mean that the others were automatically excluded.

It is not possible to lay down any general criteria which would apply to all cases before the scrutiny committee. A variety of circumstances and peculiar features of each case cannot be identical with those in another. There are no legal litmus tests to determine the question, the judgement said. Evidence relating to the origin, old traditions, customs, festivals, gods and goddesses, language, mother tongue, racial features, traits and characteristics of the community, surnames, and occupation are all relevant for identifying the person and his caste. There is no mathematical formula to arrive at a definite answer; it must depend upon the totality of the circumstances brought on record.

In conclusion, the court asked the government to make a fresh survey of the tribes and revise the lists. The ultimate goal is to assimilate them into the mainstream of society and not to preserve them as human specimen. Meanwhile the government should also see that those who did not belong to the tribes did not rob the benefits given to genuine tribals. (**Tanuja Rajpal Vs. State of Maharashtra AIR 1989 Bombay 101**)

**26) Kammara caste is different from Kammara Tribe:**

Constitution of India – Article 341(2) – Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 – G.O. Ms No. 245 dt. 30-6-1977 – Circular Memo No. 1478/J-11/96-1, dt 18-10-1996 – “Kammara” caste is different from Kammara Tribe - Kammara Tribes are not restricted to scheduled areas in certain districts of Andhra Pradesh – Identification of the said tribe shall be based on the enquiry in respect of traditional customs, manners, form of worship, drugs etc. (**Kandrati Subboji and another Vs. Government of Andhra Pradesh and others**). (1998 (1) ALD 726)

**27) Presidential Order overrides Executive Orders:**

Social Status – Scheduled Tribe – Constitution of India, Article 342 – Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (presidential Order, 1976) – State of A.P - Sugalis/Lambadis Community listed as Scheduled Tribe at Serial No.29 – G.O.Ms. No. 245, dated 30-6-1977, annexure –G.O.Ms No. 44, dated 23-2-1979 – Guidelines issued by Executive order for issuance of Social Status Certificates – Executive instructions cannot override Presidential Order – No community not included in Presidential Order can claim status of S.T – Wanjari Community not included in Presidential Order but shown as synonym to sugali/Lambadi in Annexure to G.O Ms. No 245, but delated by subsequent G.O.Ms. No 44, not entitled to claim the benefits of S.T. Community – Mere obtaining of cancellation of social status certificates obtained by petitioners – Not illegal – Principles of natural justice not violated – Petitioners not entitled to retain the benefits obtained posing as STs.



G. O. Ms. No. 245 is in the nature of executive instructions to officers concerned for issuing social status certificates – The said G.O and annexure there to not conferring S.T status on members of Wanjari Community – No enquiry need be made when once the word ‘Wanjari’ is withdrawn as synonym to Sugali/ Lambadi – Petitioners claiming to belong to Wanjari Community obtained social status certificates taking advantage of administrative instructions and grabbed benefits meant for real S.Ts – Cancellation made only after giving notice to first petitioner and hearing him – All petitioners belong to same family – No enquiry therefore required to cancel certificates of other petitioners. **(P. Raghu Ram and others Vs. Collector, Ranga Reddy Dist, and another. 1996 (1) ALT 258)**

**28) “Mala Caste” is different from Valmiki Tribe**

AP (SC, ST and BCs) Regulation of Issue of Community Certificates Act 1993 – Community Certificate – There is clear distinction between caste and tribe – Petitioner, born in scheduled area, claiming to belong to Valmiki Caste, recognized as Scheduled Tribe, secured job as Assistant in LIC and got promotions – Letter addressed by LIC to MRO to ascertain truth of petitioner’s social status – Reports of MRO and RDO submitted to Collector/R2 – R2 initiated proceedings under Act – Show-cause notice petitioner to appear before Committee – Representation by petitioner that ‘Malas’ in agency areas treated as equivalent to Valmiki Caste and that Caste Certificate issued to him does not suffer from any infirmity – Report of Committee that petitioner does not belong to Scheduled Tribe – R2 held that petitioner does not belong to ST but he belonged to Scheduled Caste – Appeal to Government/R1 against R2’s order dismissed – Writ petition – Held, full opportunity given to petitioner to put forward his case – Proceedings cannot be said to be vitiated on account of

non-supply of reports of MRO and RDO – Based on petitioner’s grandfather’s Death Certificate dated 6-4-1942 and other relevant material, clear finding recorded that petitioner belonged to ‘Mala Caste’, recognized as Scheduled Caste and not ‘Valmiki’, a Scheduled Tribe – Reservations provided for in favour of scheduled tribes cannot be permitted to be knocked away by other persons or groups – Writ petition dismissed. **(Dokkuluri Chitti Babu Vs. Government of Andhra Pradesh and another, 2009 (3) ALD 456)**

**29) “Agency Mala” different from “Valmiki ST” – The GO – Quashed.**

Collector’s circular – inclusion of malas and Agency malas in the Scheduled Tribes List while tracing the GOs of ancient years – bad in law and against the provisions of the Constitution – Circular is liable to be quashed. **(Makireddy Bangara Talli and others Vs Collector, East Godavari District, Kakinada and others, 1992(1) ALT 441)**

**30) Vaddi caste is different from Benthoriya community**

There is a long pending community issue in the district of Srikakulam, Vijayanagaram and Visakhapatnam districts whether the Vaddi caste is synonymous with the notified tribe Benthoriya? The Social Welfare Department, Government of A.P issued a Memo No.14955/CV-2/2000-26 dated 4-2-2005 holding that either Vaddis or Vaddi communities are not entitled to claim certificates as Benthoriya (Tribal). This Memo was issued basing a study report of TCR&TI.

The issue, “Whether Vaddi Community people residing in Srikakulam district and surrounding areas are Benthoriya community which is a scheduled tribe or not” fell in to consideration of the Hon’ble High Court of AP in WPs no 3740, 3750 and 15822 of 2005. The AP High Court bench

headed by the Hon'ble Judges Bilal Nazki and R.Subhashana Reddy held on 6-10-2005.

The court delivered the following Order:

The grievance of the petitioners in these writ petitions is that they belong to a Scheduled Tribe community, 'Bentho Oriya'. There has been litigation earlier also and as a result of a judgment of a Division Bench of this Court, a Committee was appointed According to the judgment dated 23.09.1996 in writ petition No.6459 of 1988 and batch, the question before the Court was.

“Whether 'Vaddi' community people residing in Srikakulam District and surrounding areas are 'Bentho Oriya' community, which is a Scheduled Tribe caste or not”

Admittedly, 'Bentho Oriya' community is a Scheduled Tribe, whereas, 'Vaddi' community is not a Scheduled Tribe and they belong to BC-A community in the state of Andhra Pradesh. The petitioners claim that they belong to 'Bentho Oriya' community, whereas the respondents claim that they belong to 'Vaddi' community. The Court, in writ petition No. 6459 of 1988 and batch, ordered that the Committee should consider the question as to whether the people belonging to 'Vaddi' Community are 'Bentho Oriya' community people or not.

We do not want to comment about the order passed by this Court, but it may be profitable to note that, perhaps, it is not possible for anybody or any authority to hold whether “A” community is equivalent to “B” community finds place in the Schedule issued by the President; it can only be altered by the Parliament. Therefore, the question of coming to a conclusion that one community is equivalent to another community, would, in our view, be without jurisdiction for any of the authorities. However, whether a person belongs to a community, which is a Scheduled community under Article

366, is a question of fact, which will have to be decided by the competent authority. In case of the writ petitioners, certificates have been issued by competent authorities that they belong to Scheduled Tribe. But, there is a mechanism also provided in law under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes, and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, providing for cancellation of certificates. Under this Act, the District Collector is an authority to cancel the certificates issued. A committee appointed by the Government, even on directions of the High Court, would not, in our view, be competent to declare whether the petitioners belong to 'Bentho Oriya' community or not. In our view, the reference itself was perhaps misplaced, as the reference made by the Court was whether 'Vaddi' community people were members of 'Bentho Oriya' community or not. Therefore, we hold that the declaration made by the committee that 'Vaddi' community people were not members of 'Bentho Oriya' community, was unnecessary. In case the respondents feel that the writ petitioners are not members of 'Bentho Oriya' community, which is a Scheduled Tribe community, they are free to approach the District Collector under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and the Collector is free to pass appropriate orders after hearing the parties. He may not get influenced by the report of the committee appointed by the Government, but, he may take into consideration the evidence collected by the Government, after giving a chance to the petitioners to challenge such evidence. Till the matter is decided by the Collector, the certificates issued earlier in favour of petitioners, shall not be cancelled.

With these observations, the writ petitions are disposed of.

No order as to costs.

## **II Jurisdiction of Executive Authorities to cancel the Certificates issued.**

### **31). Competency of Tribal welfare commissioner to conduct enquiry before the date of Amendment,**

A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Regulation of Issue of Community Certificates Act, 1993 – Section 5 – A.P.SCs, STs and BCs. Issuing Community, Nativity and Date of Birth Certificates Rules, 1997, Rule 9(10) inserted by virtue of G.O.Ms. No. 79 Social Welfare (CV-2) dated 24.7.2002 – Commissioner is competent to conduct enquiry into the correctness of any community, nativity and date of birth certificate already issued and if it is found that ht said certificate is obtained fraudulently, he shall refer the case to the concerned Collector or the Government for its cancellation – Commissioner submitting his report to Government on 22-1-1999 is valid, though he initiated the enquiry before the date of amendment. **(Commissioner of Tribal Welfare, A.P Hyderabad and another 2003 (5) ALD 465)**

### **32). District Collector alone competent to cancel the certificate not Tribal Welfare Commissioner**

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Acts, 1993 – Section 4 and 5 – Cancellation of community certificate – It is only the District collector that is competent to issue or cancel community certificate but not the Commissioner of Tribal Welfare – Proceedings pending on the date of the commencement of the Act in respect of issue or cancellation of community certificate have necessarily to be transferred to the District Collector who alone can dispose of the same. **(Jalumuru Krushnam Raju V. Commissioner of Tribal Welfare Dept., A.P Hyd. And Others) 2001 (5) ALD 389)**

**33) Municipal Commissioner has no jurisdiction to issue community certificate.**

Constitution of India, Art.341 - Constitution (Scheduled Caste) Order ( 1950), Cl. 2 – Scheduled caste – Candidate contesting election claiming to be a Scheduled Caste – Rejection of his claim on ground that he is a Verrashiva Jangamma and not Beda Jangamma which is notified as Scheduled Caste in State – Claim of candidate based on earlier decision of Civil Court in election petition relating to Z.P election – However said decision found to be not deciding his status – Moreover certificate of status issued by Municipal Commissioner was without jurisdiction – Rejection of his claim as to being a Scheduled Caste was proper (**Prabhudev Mallikarjunaiah Vs. Ramachandra Veerappa and another (AIR 1996 SC 1962) (Civil Appeal No. 4247 of 1996 Dated 23-4-1996) )**)

**34) No notice issued before cancellation of community certificate by District Collector- Order quashed.**

A.P (S.Cs, S.Ts and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Sections 5 – Community certificate – Cancellation of by District Collector on basis of report of Scrutiny Committee that petitioner not entitled to use caste of his mother, without giving any notice to petitioner – Impugned orders quashed as being contrary to statutory mandate as also violative of principles of natural justice – District Collector directed to issue a notice to petitioner and after considering explanation if any submitted by him, to pass a speaking order – Writ Petition allowed **A.P. (S.Cs, S.Ts and B.Cs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Rules 1997, Rules 8 and 9 (7).**

Section 5 of the Act empowers the District Collector to cancel the false Community Certificate obtained by any person not belonging to any of the Scheduled Castes, Scheduled Tribes and Backward Classes, either by exercising suo motu power or on a written complaint made by any person. This provision, however, expressly postulates giving an opportunity of making a representation, to the person concerned. Rule 8 of the Rules framed under the Act provided for constitution of a Scrutiny Committee at the district level for every district and lays down the procedure for the committee to hold an enquiry and submit a report to the District Collector. While it is not in disputing that the committee has given the petitioner an opportunity of participating in the enquiry, on receipt of the report, respondent No. 1 District Collector has not given him any notice. In my opinion, the respondents cannot whittle-down the statutory mandate, which requires an opportunity of making a representation to be afforded to the person concerned, against whom the action for cancellation of the Community Certificate is contemplated. Even under Rule 9(7) of the Rules, on receipt of the Committee's report the District Collector shall decide whether the certificate holder is genuine or fraudulent. The phrase "decide" connotes a decision making process by the District Collector and not the unilateral conclusion on the basis of the Committee's report. The decision making process necessarily includes a notice to the person who is likely to be affected and an opportunity of being heard. It would be in the realm of hypothesis as to what sort of defence would have been put forth by the petitioner, had a notice been given by respondent No.1 to him, in the face of the mandatory procedure prescribed by the statute. (Para 5)

De hors the statutory mandate, the requirement of hearing, as an integral part of principle of natural justice, is laid down in a plethora of judgements by the English and Indian Court.

The recent judgement of the Supreme Court in 5 SCC 553 has elucidated the case law on this aspect. On the undisputed facts of the case, the conclusion is inescapable that respondent No.1 failed to follow the procedure envisaged under Section 5 of the Act and Rule 9(7) of the Rules. On this short ground, the impugned orders of respondent Nos.1 and 2 are quashed. Respondent No. 1 is directed to issue a notice to the petitioner and after considering the explanation if any submitted by the latter, he shall pass a speaking order within a period of one month from the date of receipt of this order. **(K. Suraj Singh V. Collector and District Magistrate, Kadapa District and others. 2011 (6) ALD 193) (Para 6, 7)**

**35) Tribal Welfare Commissioner has no authority- District Collector alone has jurisdiction to cancel the community certificate.**

Scheduled Caste/Tribes – Community certificate – Cancellation/withdrawal of – proper – District Collector alone conferred with power to cancel a community certificate obtained fraudulently – (A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) issue of Community, Nativity and Date of Birth Certificate Rules 1997, Rule 9(10) – A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issuance of Community Certificates Act 1993, Section 5.

A.P (SC, ST and BC) Regulation of Issuance of Community Certificates Act 1993 – Section 5 – Community certificate – Cancellation/Withdrawal of – Competent authority – District Collector alone conferred with power to cancel a community certificate obtained fraudulently – Commissioner of Tribal Welfare has no power to withdraw or cancel community



certificate issued by competent authority like M.R.O or R.D.O  
 – If on complaint he comes to prima facie conclusion that said certificate was obtained fraudulently he should refer to District Collector for cancellation – (A.P (Scheduled Castes Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997, Rule 9(10))  
**(T.V.S.S.Kumar V. Commissioner o Tribal Welfare, Hyderabad and others 2006 (2) ALD 80)**

**36) District Collector alone competent not Commissioner of Tribal Welfare to cancel community certificate.**

Section 4 and 5 – Cancellation of community certificate – It is only the District Collector that is competent to issue or cancel community certificate but not the Commissioner of Tribal Welfare – Proceedings pending on the date of the commencement of the Act in respect of issue or cancellation of community certificates have necessarily to be transferred to the District Collector who alone can dispose of the same. –  
**(Jalumuru Krushnam Raju V. Commissioner of Tribal Welfare Dept., A.P., Hyd. And Others 2001 (5) ALD 389 (DB).**

**37) Joint Collector is not competent to cancel the ST Certificate**

Section 5 – Cancellation of Social Status Certificate – Can be done only by District Collector – Joint Collector is not competent to cancel the certificate issued by Tahsildar –  
**(D.V.V.Satynarayana Vs. Collector, Rangareddy, Rangareddy District and another, 1999(3) ALD 712 = 1999 (3) ALT 45).**

**38) Appeal lies to District Collector against the Order of MRO**

A.P (SC, ST and B.Cs) Regulation of issue of Community, Nativity and Date of Birth Certificate Rules, 1997, Rule 10 – Caste Certificate – Competent authority – Against order of Mandal Revenue Officer refusing to issue caste certificate under Rules, appeal lies to the District Collector – Constitution of India, Article 226. **(T. Sujatha and another V. Government of A.P and others 2004 (4) ALD (NOC) 270)**

**39) Enquiry in to and cancellation not barred because a community certificate issued earlier.**

Section 5 – Community certificate – Enquiry into and cancellation of, not barred merely because it was issued prior to commencement of Act. **(U. Sanyasi Rao V. Government of Andhra Pradesh and others, 2011 (3) ALD 217 )**

**40) Oral evidence is also admissible before Scrutiny Committee during enquiry.**

Constitution of India, Arts. 341, 16(4) – Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of) Caste Certificate Act (23 of 2001), S.6 – Caste claim –Verification –Powers of caste Scrutiny Committee – Committee can go into question as to whether caste certificate was rightly issued or not – committee for that purpose can consider not only documentary evidence but also oral evidence – Directions given by High Court that no oral evidence would be admissible for that purpose – Liable to be set aside. **(AIR 2007 SC 295)**

**41) Greater care should be taken before granting or rejecting caste certificate.**

Constitution of India, Art. 16, 342,226 – Reservation – Caste Certificate – Denial to grant by Scheduled Tribe Caste Certificate Scrutiny committee – Committee neither considering relevant materials placed before it – Nor applying its mind to important documents – Such wrongful denial depriving genuine candidate of the privileges conferred upon her – Not proper – Greater care should be taken before granting/rejecting caste certificates. (**Gayatrilaxmi Bapurao Nagpure Vs. State Maharashtra and others AIR 1996 SC 1338**)

**42) Directions issued by the Commissioner of Tribal Welfare questioned.**

A.P (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of community Certificates Act, 1993 – Section 20(1) – Rule 8 of the Rules framed under the Act – Appellant claiming to be a member of Scheduled Tribe on the basis of Community Certificate issued prior to the Act – Writ Petition filed by her questioning the directions issued by the Commissioner of Tribal Welfare to the appellant to appear herself before the Director TCR & TI to prove her claim – Rule 8 prescribes the procedure for conducting an enquiry in this regard – As per the said procedure, direction issued to the Scrutiny Committee at the District Level to consider the case of the appellant and also for provisional allotment of a seat in accordance with Rule 19 for a period of four months – Meanwhile the Scrutiny Committee shall complete the enquiry and submit its report to the Collector, who has to act accordingly. (**Sankaravamsam Saidevi v. Commissioner of Tribal Welfare, Telugu Sankshema Bhavan, Hyderabad and another**) 2002 (1) ALD 841)

**43) Action on the basis of report of Commissioner of Tribal Welfare – Illegal.**

A.P (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate which was earlier issued by the then competent officer without referring the matter to scrutiny committee contemplated under Rule 9 but simply basing his order on the report of the Commissioner of Tribal Welfare, who has no jurisdiction to decide the matter - Illegal –Further, subsequent removal of the petitioner from service by initiating disciplinary proceedings basing on the order of the Commissioner of Tribal Welfare is also bad and therefore liable to be set aside. **(D. Sudarshan V. Govt. of A.P and others) 2002 (3) ALD 678 (DB)**

**44) Commissioner of TW has no authority to stall the benefits but he can make only after enquiry**

Sections 4 and 21 – Andhra Pradesh (SCs, STs, and BCs) Issue of Community, Nativity and Date of Birth Certificate issued under the Act is valid till it is cancelled – It is not open to the Commissioner of Tribal Welfare to stall the benefits under the certificate – If he is of opinion that the certificate has been obtained by fraud or misrepresentation he can make a complaint before the Collector, who shall after conducting an enquiry decide the same – **(P. Kranthi Vs. Government of Andhra Pradesh and others, 2000(2) ALD 622)**

**45) Non furnishing copy of the reports before cancellation of certificate- Invalid –The order of District Collector Set aside.**

1. Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 – Section 20 – Rules 9 (3)

and 9(9) – Declared ultra virus as they run counter to the provisions of the Act and prescribe an enquiry frustrating the very objective of the act.

2. Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 – Section 9 – Rule 14 of the rules framed under the Act- Enquiry conducted by the scrutiny committee without furnishing copies of the preliminary reports submitted by revenue divisional Officer and the material collected by the scrutiny committee – No opportunity given to the candidates to cross examine the witnesses – District Collector before cancelling the caste certificates did not furnish a copy of the report of the scrutiny committee and did not give any opportunity to make any representation – Held, in the circumstances, the enquiry is vitiated by non-observance of due process of law and procedural fairness – Impugned order set aside and the matter remanded order set aside and the matter remanded back to the scrutiny committee to conduct a fresh enquiry. **(M. Karunakar and another V. Sate of A.P and others. 2001 (2) ALD 18)**

**46) Tribal Welfare commissioner has no jurisdiction under law- Suppression of earlier judgements of court-**

Petition under Act. 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of mandamus declaring the action of the first respondent – Commissioner of Tribal Welfare in conduction an enquiry by proceedings Lr. Rc. No.1024/93/TRI-VC-8, Dt.27-3-1998 as bad and one without jurisdiction.

**The High Court delivered the following Judgement**

This writ petition is filed aggrieved of the action of the first respondent – Commissioner of Tribal Welfare in conducting enquiry in proceedings Rc.No.1024/93/TRI-VC-8 dated 27-3-1998 with regard to the social status of late L. N. Sanyasi Raju, father of the petitioner, who was a former Member of Legislative Assembly and Zamindar of Salur Mandal of Vizianagaram District, claiming social status of Konda Dora, falling under Scheduled Tribe Community.

It is averred that in the year 1983, the Government attempted to disturb petitioner's claim and genuineness as a member of the Scheduled Tribe community by issuing a Memo No. 3249/F2/80-1 dated 9-12-1980 stating that late L. N. Sanyasi Raju and others do not belong to Scheduled Tribes. The said Memo was challenged in Writ Petition No. 1782 of 1983 which was allowed quashing the memo and confirming the social status of Sri L. N. Sanyasi Raju and his blood relations as Member of the Scheduled Tribe Community i.e. Konda Doras. Aggrieved of the said order, the Government preferred W.A No.9 of 1986 and a Division Bench of this court upholding the social status of the Salur Hill Zamindari families as Scheduled Tribes, dismissed the same. Thus the order has become final. Thereafter no attempt was made by the respondent Government to disturb the social status of the petitioner. It is also averred that in the year 1991 and 1992, further enquiries were made and the petitioner was given caste certificate as Scheduled Tribes and his claim as such was never negated. While things stood thus, in the month of April, 2000, when the petitioner applied for issuance of caste certificate, the Revenue Divisional Officer, Parvathipuram. Since no action was taken by the Revenue Divisional Officer, the

petitioner approached High Court and filed W.P No. 16499 of 2001 and a learned Single Judge of this court by order dated 9-7-2001 disposed of the writ petition directing the petitioner to submit an application before the Revenue Divisional Officer, Parvathipuram for the said purpose and the Revenue Divisional Officer was directed to conduct an enquiry after giving an opportunity to the petitioner and issue caste certificate within a period of three weeks from the date of the receipt of a copy of the order. In compliance of the same, the petitioner submitted an application to the Revenue Divisional Officer on 5-9-2001. It is alleged that while enclosing report submitted by the Commissioner of Tribal Welfare in Rc. No. 1024/93/TRI-VC-8 dated 27-3-1998, directed the District Collector to enquire into the matter and to cancel the social status certificate granted to the blood relations of late L.N. Sanyasi Raju. It is contended that the Government has no authority to direct the Tribal Welfare and forwarded the report to the District Collector to proceed with the matter. The Government directed the District Collector to enquire into the social status of the blood relations of late L.N. Sanyasi Raju, keeping in view the report submitted by the Commissioner, Tribal Welfare, dated 27-3-1998 on the ground that by that time they said L.N Sanyasi Raju died. If any enquiry is conducted by the Commissioner, Tribal Welfare, it is behind the back of the petitioner to deprive him of the privileges conferred on him as a member of the Scheduled Tribe Community.

It is further submitted that the enquiry was conducted by the Revenue Divisional Officer purely on the report of the Commissioner, Tribal Welfare is also evident from the fact that the District Collector, Vizianagaram cancelled the social status certificate of one of the blood relatives of the petitioner i.e. Kumari S. Aruna Kumari by proceedings Rc. No. 1030/

95-C-7, dated dated 3-10-1999. This writ petition is filed assailing the power and jurisdiction of the Government to direct the Commissioner, Tribal Welfare, to conduct enquiry and in turn the Commissioner, Tribal Welfare submitted enquiry report against the social status of the petitioner, his father and blood relations. In support of his contention, the learned counsel relied on a decision of this court in P. Kranthi Vs Government of Andhra Pradesh and others<sup>1</sup> where in a learned Single Judge of this court has held that the Commissioner of Tribal Welfare has no role to play either at the stage of issue of Community Certificate or cancellation of the Community Certificate. Therefore, for all these reasons, the petitioner seeks a writ of mandamus declaring the action of the first respondent - Commissioner, Tribal Welfare, in conducting enquiry and submitting report through Letter Rc. No. 1023/93/TRI-VC-8 dated 27-3-1998 is without jurisdiction, illegal and bad in law. In replay to the above said contentions raised by the petitioner, the respondents have filed their counter affidavit taking objection with regard to the maintainability of the writ petition on the ground that the petitioner has earlier filed Writ Petition No. 4646 of 1999 challenging the proceedings of the State in Memo No. 290/CV.2/83-47 dated 12-12-1998 wherein the Government informed the District Collector, Vizianagaram that the social status of the late L. N. Sanyasi Raju had to be decided in accordance with law and as per the rules issued in GO Ms. No. 58 dated 12-5-1997 and also keeping in view the report of the Commissioner of Tribal Welfare dated 27-3-1998. As stated earlier, late Sri L. N Sanyasi Raju is father of the petitioner herein. The W.P. No. 4646 of 1999 was dismissed on 30-4-1999 and Writ Appeal No. 1189 of 1999 preferred there from by the petitioner was also dismissed on 24-8-1999. It is pertinent to note that the report submitted by the



Commissioner, Tribal Welfare dated 27-3-1998 and the consequential proceedings directing the District Collector, Vizianagaram, to enquire into the social status of father of the petitioner in Memo No. 290/VC.2/83-47 dated 12-12-1998 were subject matter of consideration before the High Court both in Writ Petition and Writ Appeal. The petitioner now assails the correctness jurisdiction, authority and power of the Commissioner, Tribal Welfare to conduct enquiry on the basis of the report of the Commissioner, Tribal Welfare, directing the District Collector to enquire and decide the social status of the father and blood relations of the father of the petitioner. It is further submitted that the benefits under the status of Scheduled Tribes, enjoyed by the petitioner, if any, is only due to misleading the official and hiding the fact that the original status as hill Zamindars are Kshatriya. It is further asserted in the counter affidavit that when the petitioner failed in his attempts to succeed in his claim, now resorted to question the report of the Commissioner, Tribal Welfare, in the present writ petition, which is not permissible in law, as such the writ petition is liable to dismissed in limini.

Nothing concrete is made out in the reply affidavit filed by the petitioner. The fact remains that the impugned order assailed in this writ petition stood to the judicial scrutiny of this court before a learned Single Judge in Writ Petition 4646 of 1999 and also Writ Appeal No. 1189 of 1999. Reasons best known to the petitioner, no mention was made by the petitioner about these writ proceedings instituted earlier. That apart, in Writ Appeal No. 1189 of 1999, which was directed against the order of the learned Single Judge directing the District Collector to make an enquiry in accordance with law, with regard to the social status of L. N. Sanyasi Raju, father of the

petitioner herein, a Division Bench of this court by order dated 24-8-1999 observed as under:

*“.....Thus in view of the rules referred to above, we are of the considered view that no interference in the impugned order is called for the District Collector shall be at liberty, in case he comes to the conclusion of the doubtful nature of the community certificate issued, to refer the matter to the Committee constituted under the said Rule. It is only in case of doubt and after obtaining the opinion of the Committee that the District Collector should take a final decision with respect to the cancellation of the community certificate of the appellant. Any observation made on fact by this court will not be taken notice of either by the District Collector or the Committee or any other authority while determining the social status.*”

With the above observations, the writ appeal is disposed of. No costs .....

Surprisingly, the petitioner herein has suppressed the above material facts having crucial bearing on the subject. Viewed from any angle either on merits of the case or the fact the impugned proceedings already stood to judicial scrutiny by a Learned Single Judge and a Division Bench, I am of the considered view that the petitioner has not come to the court with clean hands. In view of the above discussion, no relief can be granted to the petitioner and the writ petition is liable to be dismissed and is accordingly dismissed. No order as to costs. **(WP NO. 21045 OF 2001- Vikram Chandra Sanyasi Raju vs Commissioner of Tribal Welfare, Govt of A.P)**

**47) Dispossession of land belonging to ST stayed on the basis of a money decree.**

This judgement is significant in two ways. It stops the dispossession of land belonging to ST on a money decree. Secondly it lays down the tests for determining the question whether person is a member of ST.

**Facts:** This case arose out of a dispute over land. The tribals had borrowed money from a local man and were not able to return it. Therefore, a money decree was passed against them. Later the land was put to court auction. It was sold and the sale was confirmed. Later the tribals filed a suit claiming that as they were ST, the sale of the land in court auction without the permission of the competent authority was violative of the regulations made by the state government. It was dismissed. After further tortuous litigation, the dispute landed in the Orissa High Court.

**Ruling:** The petition of the buyers of the land claiming its possession was dismissed. The land was ordered to be restored to the tribals.

According to 1956 Orissa Regulation No. 2, any sale of immovable property by any ST member shall be void unless made in favour of another member of ST or with the previous consent in writing of the competent authority. There were also controls on attachment and sale of the property in execution of money decree. Therefore, the auction sale in this case was invalid, the High Court said, as there was no prior sanction from the competent authority.

The High court rejected the argument of the purchasers that the objection regarding the regulation was not raised earlier and therefore it could not be raised at the late stage in the

High Court. The judgement said that it could be raised as the basic issue was the validity of the sale.

There was an argument about the tribe of the original landholders. The High Court ruled that 'Savar' tribe in Orissa included 'Jarasavar', according to the Constitution (ST) Order 1950. While determining the question of tribe according to Article 342 of the Constitution, the following rules were laid down. (1) Generally, it would be open to any person to lead evidence to establish that a particular caste/tribe was part of the caste/tribe notified under the 1950 Order. (2) To determine the question of caste/tribe, the public notification must be referred to, (3) the name by which a caste or sub-caste is known is not decisive. It may be shown that the name included in the order is a general name applicable to sub-caste/sub-tribes. (4) Para 2 of the order provides that the tribes, or parts of, or groups within in the tribes specified in the schedule to the order shall also be deemed to be ST. (5) An admission made by a party that he belongs to a SC/ST is evidence against him, but it is not conclusive. (**K. Adikanda Patra Vs. Gandna. AIR 1983 Orissa 89**)

**48) District Collector cannot act upon the report of Director of TW.**

A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issuance of Community Certificates Act, 1993 – Sections 5 and 21 – In pursuance of directions issued by A.P Public Service Commission as well as by A.P Administrative Tribunal, Commissioner of Tribal Welfare is directed to enquire into the Scheduled Tribe Status in respect of the candidates who appeared for interview for Group-I Services, in which the petitioner also is included – Director of Tribal Welfare after issuing notice to the petitioner and

others opined that the Caste Certificates are bogus – On the basis of the said opinion the District Collector issued show cause notice to the petitioner – Subsequently Government also issued G.O.Ms.No.95, dated 19-8-1996 directing the District Collector to take action in the matter – Said G.O. was quashed by High Court holding that the Government being the appellate authority under the Act cannot issue such direction – Subsequently under the provisions of the Act, the Joint Collector and chairman of District Level Scrutiny committee issued a notice to the petitioner basing on the report of Director of Tribal Welfare – That notice was also quashed by High Court holding that Collector cannot depend upon the report of the Director but has to proceed de novo. Meanwhile brother of the petitioner filed writ petition questioning the enquiry – Another writ petition also filed under Public Interest Litigation by Andhra Pradesh Scheduled Tribes Employees Association seeking a direction to order CBI enquiry – In all these writ petitions the issuance of notice to the petitioner has not at all been challenged – The attempt of the petitioners is only to stall the proceedings, which is not permissible under law – In the circumstances the authorities are directed to proceed with the enquiry and give a final decision – Writ Petitions filed by the petitioner and his brother are all dismissed and the PIL Writ Petition is allowed. **(J. S. Venkateswara Rao (died) per L R V. Government of A. P and another 2004 (1) ALD 659 (DB)**

**49) District Collector alone competent to cancel the certificate**

Andhra Pradesh (Scheduled Castes, Scheduled Tribe and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 – Section 5 – Cancellation of Social Status Certificate – can be done only by District Collector –

Joint Collector is not competent to cancel the certificate issued by Tahsildar. **(D.V.V. Satyanarayana V. collector, Rangareddy District and another 1999 (3) ALD 712 (DB))**

**50) Cancellation of certificate by District Collector on evidence- Writ Petition dismissed.**

A.P (SC, ST and BC) Regulation of Issue of Community Certificates Act 1993 – Sections 5 and 7 (2) – Migration-cum-Caste Certificates – Cancellation of, by District Collector/R1 on ground of being fraudulent and initiation of criminal action – Writ petition – Petitioners claim S.T. status as Lingadhari Kaya community, a Scheduled Tribe – No documentary or oral evidence in support of their claim – Migration-cum-Caste Certificates issued by MRO, Cherla to petitioners found to be without any basis – Record disclosing that none of ancestors of petitioners ever lived in village ‘P’ of Cherla Mandal – Petitioners not aware of language/clan/customs and culture of Lingadhari Koya/Koya – Petitioners not entitled to claim ST status on basis of certificates issued by MRO, Cherla – Impugned order of R1 cannot be faulted Writ Petition dismissed – (AP(SC,ST and BC) Issue of Community, Nativity and Date of Birth Certificate Rules 1997) – ADMINISTRATIVE LAW – Authority to issue certificate, lack of, effect of (Para 10-12) **(Kallem Chandraiah and others V. District Collector, Khammam, Khammam District and others 2009 (3) ALD 817)**

**51) Cancellation of certificate without conduct enquiry- Illegal.**

Section 5(1) – Proviso – Rules 8, 9 and 18 issued under the Act – Cancellation of community certificate by District Collector without conducting an enquiry – Illegal – **(J.Anuradha Vs. Government of AP 2000(5) ALT 592).**

**52) Enquiry in to ST status ordered.**

A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act (16 of 1993). S.20 (1) – A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Issue of Community, Nativity and Date of Birth Certificates Rules (1997), R. 6 – Scheduled Tribe status – claim, for –Enquiry, as to – District Level Scrutiny Committee accordingly directed to make enquiry as to genuineness of ST certificate produced by Claimant in instant case. (**Kum. Sankaravamsam Sasidevi. Appellant V. Commissioner of Hyderabad and another AIR 2002 A. P 184**)

**CHAPTER - II**

**CANCELLATION OF CASTE CERTIFICATES –  
PROCEDURES AND PRINCIPLES OF NATURAL  
JUSTICE EMPHASISED.**

- 1). Burden of proof lies on the claimant and procedure for issuance of certificate emphasised.**
- (A) Constitution of India Art.15(4)——Social Status Certificate-Burden of proof as to social status- It is always on person who propounds it to seek constitutional socio-economic advantages—It is no part of duty of state to disprove or otherwise.**
- (B). Constitution of India, Art. 15(4) - Issuance of Social Status Certificate – Procedure of issuance of certificates, their scrutiny and their approval indicated.**

Procedure for issuance of social status certificates, their scrutiny and approval may be 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 by the Officer like 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 gazette 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 but 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 they 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 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 para6 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 finalizing 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 certified obtained or social status claimed is found to be false, the parent/guardian/ the candidate should be prosecuted for making 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 office under the State or the Union or elections to any local, 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. **(Director of Tribal Welfare, Government of Andhra Pradesh, Vs. Laveti Giri and another AIR 1995 SC 1506)**

**2) Once burden of proof discharged by claimant- No need to prove it again.**

**Section 5 and 6** – Community certificate – Cancellation of – Burden on petitioner to prove that he belongs to Scheduled Tribe- Petitioner filed all relevant documents – School certificates show social status of petitioner as belonging to Scheduled Tribe – It is strong factor to support contention of petitioners that he belongs to Scheduled Tribe- That apart, very report of Mandal Revenue Officer shows that petitioner belong to Scheduled Tribe- More important, even District Collector agreed that father of petitioner to prove – Fact admitted by District Collector need not be proved again by petitioner – Petitioner, held, established that he is Konda Kapu by community – Impugned order passed by District Collector set aside.**(Danala Appa Rao v. District Collector and District Magistrate, East Godavari, Kakinada and another, (2014(1) ALD 180)**

**3) Affinity test is not the sole criteria to determine the status of ST**

The question that fell for consideration before the Supreme Court is what parameters are to be applied in determining whether an applicant belongs to a notified Scheduled Tribe?

This appeal is directed against the judgment of the High Court of Judicature at Bombay, Nagpur Bench, in W.P. No. 1687 of 2004. The High Court held that unless an applicant establishes his ethnic linkage with a Scheduled Tribe, his Caste claim cannot be accepted merely on the strength of documentary evidence.

However the Supreme Court setting aside the order of the High Court held in 2011 “that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of

the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim". The Supreme Court laid the following broad parameters which could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre- Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were some what immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

The Supreme Court further held that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee

merely performs the role of Verification of the claim and therefore, an only scrutinise the documents and material produced by the applicant, In case the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim. It is pertinent to note that some of these documents date back to the Pre-Independence era, issued to appellant's grandfather and thus, hold great probative value as there can be no reason for suppression of facts to claim a non-existent benefit to the 'Halbi' Scheduled Tribe at that point of time. From the documents produced by the appellant, it appears that his near paternal relatives has been regarded as belonging to the 'Halbi' Scheduled Tribe. The Supreme Court held that "the documentary evidence produced by the appellant was not examined and appreciated in its proper perspective and the High Court laid undue stress on the affinity test. Thus, the decision of the Caste Scrutiny Committee to cancel and confiscate the caste certificate as well as the decision of the High Court, affirming the said decision is untenable". The SC held that "the decision of Caste Scrutiny Committee and the High Court are set aside and the case is remitted back to the Caste Scrutiny Committee for fresh consideration in accordance with the relevant rules and the aforesaid broad guidelines"(Anand Vs Committee for Scrutiny&Verification of Tribe claims& others, SC in civil appeal No. 6340 OF 2004)

**4) Refusal to issue certificate is un just when the claimant proved that he is ST**

**Section 6** – Caste certificate – Refusal to issue, rejecting claim of petitioner that he is a Konda Kapu by community, a Scheduled Tribe – Not justified, when father of petitioner declared by High Court to be belonging to Konda Kapu Community- Finding of District Collector that order was passed by Court on humanitarian grounds considering length of service put in by petitioner's father in Railway Department – Not acceptable- Community certificate

cannot be ordered on humanitarian grounds – Unless Court concluded that father of petitioner belonged to Scheduled Tribe such an order would not have been passed – Child taking community of father is normal rule- Petitioner, therefore, entitled to Caste Certificate by virtue of community of his father per se unless there are other circumstances showing that he did not belong to community of father – No evidence to show that petitioner was brought up as a Telaga child or that his social status is Telaga, a Non tribal community-Petitioner discharged burden placed on him under R.6 of Rules made under Act by producing judgment of High Court wherein it is held that his father belongs to Konda Kapu Community – No contrary evidence produced by State – Writ petition allowed – Impugned orders set aside holding that petitioner belongs to Konda Kapu Community as claimed by him – Respondents directed to issue caste certificate to petitioner accordingly- [A.P.(Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificate Rules 1997, Rules 6]

It was observed by the learned District Collector that the Court held that the father of the petitioner was a Konda Kapu by community in view of the length of service put in by the father of the petitioner in the Railway Department and on humanitarian grounds. If that were the intention of the High Court, the High Court could very well have held that the question of the community of the father of the petitioner would not be considered at that length of time and that what was recognized by the Department earlier should hold good so far as the employment of the father of the petitioner was concerned. However, the Court held that the father of the petitioner was a Konda Kapu by community. Community Certificate cannot be ordered on humanitarian grounds. Unless the court concluded that the father of the petitioner belonged to Scheduled Tribe, Such an order would not have been passed. Thus, this court considers that the Court passed orders in WP. No. 2444



of 1982 and batch that the father of the petitioner was a Konda Kapu by community.

It may be pointed out at the outset that in 1996 (2) ALD 33, the Court took the view that the Social Status of a child goes with the social status of the father but not with that of the mother. In 2010(2) ALD 333, a Division Bench of this Court held that the offspring of a Tribal man and a Non-Tribal woman takes the social status of a Tribal Community as the community of the father. Thus the child taking the community of the father is the normal rule. In (2012)3 SCC 400 the Supreme Court considered that the child can even take the community of the mother. The Supreme Court never considered that taking the community of the father is not the rule. It merely observed that the caste of the offspring is essentially a question of fact.

In the present case, there is absolutely no evidence to show that the petitioner was brought up as a Telaga child nor is there any evidence to show that the social status of the child is Telaga, which is a Non-Tribal Community. Where admittedly the father of the petitioner belongs to Scheduled Tribe as a Konda Kapu by community, the Government cannot cancel the Caste Certificate by virtue of the community of his father per se unless there are other circumstances showing that the petitioner did not belong to the community of the father. Such evidence has not been produced by anybody.

The petitioner produced the common judgment of the High Court (WP. No. 2444 of 1982 and batch) where the Court held that the father of the petitioner belonged to Konda Kapu Community. Contrary evidence has not been produced by the State. This Court, therefore, unhesitatingly accepts the claim of the petitioner that he belongs to Konda Kapu Community. The orders of the MRO as well as the District Collector and the Government Order in G.O. Ms. No. 37 consequently are incorrect and are accordingly set aside. The petitioner is found to be belonging to Konda Kapu Community.

Accordingly, the writ petition is allowed. The respondents are directed to issue Caste Certificate of the petitioner within 4 (four) weeks from the date of receipt of a copy of this order to the effect that the petitioner is a Konda Kapu by community. (**Bonda Seetharama Rao v. Government of Andhra Pradesh and others, 2014 (2) ALD 370**)

**5) Cancellation of caste certificate valid when failure to prove the Status notified in specified areas.**

A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Caste certificate – Cancellation of, propriety

– Petitioner claimed status of ST, by stating that he is a Konda Kapu, a community prevalent in agency tracts of East Godavari and Visakhapatnam District – Failure of petitioner to prove that he or his family migrated from East Godavari District, and even to reveal name of his native place before District Level Committee constituted under Act/Rules to enquire into genuinity or otherwise of community/caste certificate – Collector and District Magistrate taking same into account passed impugned order holding that petitioner does not belong to ST community and directing cancellation of caste certificate – Appellate Authority/R1 also examined matter on proper lines while dismissing appeal – even before High Court petitioner not able to establish his claim, that he belongs to Konda Kapu community – Writ petition dismissed – (**A.P (S.Cs, S.Ts and B.Cs) Issue of Community, Nativity and Date of Birth Certificate Rules 1997 (Para 9, 11)**)

A.P(S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Caste certificate – Pertaining to ST, recognized only in a specified area – Cannot be issued, for the first time, by an officer, in non-scheduled areas - A.P(S.Cs, S.Ts, and B.Cs) Issue of Community, Nativity and Date of Birth Certificate Rules 1997.

The Caste Certificates, in respect of the tribes, which are prevalent in certain areas, mentioned in the relevant orders, issued under the corresponding provisions of law; are to be issued by the competent authority of that particular place. In case such an authority has issued certificate, and the person, who is certified to be ST, or his lineal descendants migrate to other places, there would be a possibility for the authorities, in the non-scheduled areas, to issue certificates, based on the earlier certification by the authority in the scheduled area. A Caste Certificate pertaining to ST, which is recognized only in a specified areas, cannot be issued, for the first time, by an officer, in the non-scheduled areas. The reason is that he would not be in a position to verify the relevant facts. Firstly, he has no authority and power to go to the concerned area in the agency tract, and verify the genuinity of the claim of the person, who had applied for the certificate, as regards a caste, which is not recognized, as prevalent in his area of operation. If the case of the petitioner is examined in this background, it emerges that he was issued a Caste Certificate, for the first time in the year 1980, by the Tahsildar, Gudivada, without there being any earlier certificate by a competent authority from the Scheduled Area. **(Puppala Anjaneyalu Vs. Government of Andhra Pradesh and others. 2011 (3) ALD 757) (Para 8).**

**6) Cancellation of caste certificate valid when fraud admitted.**

A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 – Section 11 – Cancellation of caste certificate – Appellant admitted that he does not belong to Backward Class but produced a false certificate that he belongs to Backward Class – In view of this clear admission, the cancellation of certificate cannot be faulted. **(Bokkam Ramam V. District Collector, Visakhapatnam District, Visakhapatnam and another 2001 (6) ALD 691 (DB)**

**7) Principle of Estoppels is not applicable when certificate obtained by fraud**

Constitution of India, Arts. 341(2), 366(24) – Caste certificate – cancellation of – respondent was Scheduled caste – subsequently he obtained certificate of being Scheduled Tribe – Enquiry conducted or granting permanent certificate - It was found that respondent was not Scheduled Tribe but was Scheduled Caste – His caste certificate accordingly cancelled – Opportunity was given to him to establish his status – certificate obtained by him was false, illegal and fraudulent – He cannot plead estoppels – Cancellation of fraudulent certificate – Proper - Evidence Act (1 of 1872), S. 115. **(State of Tamil Nadu and others Vs Guru Swamy, AIR 1997 SC 1199)**

**8) Promissory Estoppels or Equity have no application**

Constitution of India, Art 226-Education-Admission-Student seeking admission to educational course by false claim to be a member of certain tribe- He cannot lay claim to continuance in studies on ground of equity or promissory estoppels-One

claiming equity must come with clean hands-There is no estoppels as no promise of social status is made by the State when false plea is raised for social status- Evidence Act (1 of 1872),Section 115).(Kumar Madhuri Patil and another Vs. Addl. Commissioner, Tribal Welfare - AIR 1995 SC 94)

**9) Caste Certificate issued by Tahsildar based on certificate issued by an MLA- not valid.**

The joint collector cancelled the caste certificate issued by the Tahsildar declaring that the petitioner belonged to Mannevarlu, a tribe. He had got a job with a local authority on the basis of his ST certificate. After the certificate was cancelled, he was suspended from service and an enquiry was ordered. During the enquiry he could not produce any documentary evidence or any independent witness from his village to substantiate his claim. He did not produce educational records. On the other hand, official enquiry showed that he belonged to Velama caste and not Mannevarlu. He got the certificate from Tahsildar on the basis of the certificate issued by an MLA. The high court said that he had not discharged his burden to prove that he belonged to ST. The cancellation of the certificate was upheld. (M. Balakrishna Rao V Joint Collector AIR 2001 AP 158)

**10) Cancellation of caste Certificate- Procedure to be followed.**

A.P (SC,ST, and BCs) Regulation of Issuance of Community Certificates Act 1993 – Section 5 – Caste Certificate – Cancellation of – Procedure to be followed - Petitioner employed as Khalasi in Traffic Department of Visakhapatnam Port Trust on basis of status of Scheduled Tribe – Probation declared – Promoted as Tally Clerk – Communication to petitioner by Director of Tribal Welfare informing him of pending inquiry into genuinity of his social status – Issue of

notice to petitioner by Joint Collector and Chairman, District Level Scrutiny Committee proposing to conduct enquiry into his social status – Writ Petitions – Filing of, challenging said communication as also proposed enquiry and seeking direction to Port Trust to promote him to next higher post of Assistant Quay Foreman in view of act that his services were regularized in feeder cadre –Held, not only Joint Collector proceedings initiated by Commissioner of Tribal Welfare became redundant – Matter, once in session of Joint Collector proceedings before latter have to abate – Proceedings under a statute, when his appointment itself traceable to social status claimed by him, High Court cannot compel Port Trust to consider his case for promotion ignoring these developments – Instead authorities concerned can be required to expedite procedure so that controversy can be given a quietus – (A.P (SC,ST and BCs) Regulation of Issue of Community Certificates Rules 1997, Rules 8 and 9) (**J.V.T. Krishna Murthy V. Tribal welfare Department, Government of Andhra Pradesh, Hyderabad and others 2008 (4) ALD 541**).

**11) Delayed communication of order not valid.**

**Section 4** – Order of cancellation of community certificate passed in the year 1994 but communicated to the petitioner in the year 2001—The said order is not an order in the eye of law and it cannot be said to have been passed under the provisions in force prior to the Act.—(**Jalumuru Krishnam Raju Vs Commissioner of Tribal Welfare, State of A.P - 2001 (5) ALD 389 (DB)**)

**12) Caste Certificate given earlier is valid for all purposes till it is cancelled.**

A.P. (SC,ST and B.C) Regulation of Issue of Community Certificate Act 1993(w.e.f. 23-8-2001) – Sections 5, 21 –

Community Certificate – Cancellation of – Power of, vests in District Collector, who after getting enquiry conducted by District level scrutiny committee, empowered to cancel certificate – Unless certificate issued earlier, cancelled under provisions of Act, it shall be deemed to be valid for all purposes – Therefore, validity of certificate cannot be gone into in a write petition – (Constitution of India, Article 226, A.P (SC,ST and BC) Issue of Community, Nativity and date of birth Certificate Rules 1997, Rule 19 ) – A.P. Panchayat Raj Act 1994, Sections 20, 20 (aa) (Inserted by Amendment Act of 2001) (Para 8, 9)

A.P. Panchayat Raj Act 1994 – Section 20, 20(aa) (Inserted by amendment Act of 2001) – Panchayat elections – Community certificate – Produced by candidate, as long as recognized to be valid under Certification Act, a member cannot be held disqualified unless such certificate is cancelled under Section 5 of Certification Act – (A.P (SC,ST and B.C) Regulation of issue of community Certificate Act 1993 (w.e.f. 23-8-2001), Section and 21; A.P (SC,ST and BC) Issue of Community, Nativity and Date of Birth Certificate Rules 1997, Rule 19) (Para 9, 11)

A.P. Panchayat Raj Act 1994 – Sections 19, 20, 20 (a a) (Inserted by Amendment Act of 2001) – Election of Sarpanch – Office of Sarpanch reserved for BCs – 6<sup>th</sup> respondent declared elected – Challenged on ground that R6 obtained Community Certificate to show that he belongs to Vannereddy Caste, recognized as B.C in State of A.P – Therefore, prima facie said certificate is valid unless cancelled – When prima facie basis of qualification has statutory support, usurpation of public office cannot be presumed – Failure of petitioners to avail remedy provided by Section 22 even after coming to

know about alleged disqualification of R6, a relevant factor while considering issue of quo warranto – Writ petition dismissed – (A.P (SC,ST and BC) Regulation of Issue of Community Nativity and Date of Birth Certificate Rules 1997, Rule 19) – Constriction of India, Article 226 – Writ of quo warranto.

Constitution of India – Article 226 – Writ of quo warranto – A prerogative writ, in nature of a right of superior Court against a person who usurped public office - It enables Court to enquire by what authority usurper supports his claim to office – However, it is within right of Court whether or not to exercise discretion to ask such person to show justification for claim – Issue of writ o quo warrant, subject to limitations and cannot be issued on mere suspicion – Cannot be issued for redressal of grievance involving private rights – A.P Panchayat Raj Act 1994, Section 233.

A.P Panchayat Raj Act 1994 – Section 233 – Election – Disqualification of candidate on ground of communal status – A matter for election petition – failure of petitioners to file election petition within 30 days as per Rule 3 (1) of 1995 Rules – Public law remedy by filing writ petition seeking writ of warranto, not proper – Issue of any prerogative writ including a writ of quo warranto, subject to different limitations – Writ petition not maintainable – (Constitution of India, Articles 226,242-O, A.P Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules 1995, Rules 3(1), 12) **(D.Rajamani Reddy and others V. Government of A.P. and Others 2007 (4) ALD 817)**

**13) Caste certificate issued earlier is valid till it is cancelled:  
No benefits to be stalled.**

Andhra Pradesh (SC, ST and BC) Regulation of Issue of Community Certificates Act, 1993 – Section 4 and 21 – Andhra Pradesh (SC, ST, and BC) Issue of Community, Nativity and



Date of Birth Certificate Rules, 1997, Rule 5 – Community certificate issued under the Act is valid till it is cancelled – It is not open to the Commissioner of Tribal Welfare to stall the benefits under the certificate - If he is of opinion that the certificate has been obtained by fraud or misrepresentation he can make a complaint before the Collector, who shall after conducting an enquiry decide the same.

A certificate issued by a competent authority under the provisions of Section 4 of the Act has unimpeachable finality till the same is cancelled only by the District Collector. The Commissioner of Tribal Welfare has no role to play either at the stage of issue of community certificate. In view of this, the submission made by the learned Government Pleader for Social Welfare that so as to prevent the misuse of the benefits intended for the candidates belonging to SCs, STs and BCs, a high authority like the Commissioner of Tribal Welfare should be presumed to be vested with such inherent power to stall the benefit of integrated certificate, though looks to be attractive, cannot be accepted. Nevertheless, in view of Section 5 of the Act that the Collector can initiate action for cancellation either suo motu or on application or on a written complaint, it is always open to any other authority, including the Commissioner of Tribal Welfare, to make a written complaint to the District Collector to enquire into the genuineness of the integrated community certificate produced by a person seeking admission or appointment. On such complaint being made, the District Collector is bound to conduct enquiry having regard to the fact that the written complaint is made by a no less person than the Head of the Department of Tribal Welfare. (Para 5)- **(P.Kranthi Vs Government of AP 2000 (2) ALD 622)**

**14) Once Certificate issued benefits cannot be suspended**

A.P (SC, ST and BCs) Regulation of Issue of Community Certificates Act 1993 – Section 5(2) – False Community Certificate – Cancellation of – Competent authority – Petitioner appeared for EAMCET – Allotted seat in Medical College- Tendered fee – Not issued allotment letter – Pursuant to memo of Director of Tribal Welfare/R2, R1 kept seat allotted to her in abeyance and reused admission – Writ Petition – Held, certificate issued by MRO submitted by petitioner along with application for admission, showing her as belonging to ‘Bugata’ community, which is recognized as Scheduled Tribe, conclusive proof that she belongs to Bugata Community – R2 has no power to suspend trajectory of certificate – Conduct of respondents in denying petitioner opportunity to pursue MBBS course, patently arbitrary and illegal – (A.P (SC,ST and BCs) issue of Community, Nativity and Date of Birth Certificates Rules 1997 (as amended in G.O. Ms.No.70 dated 24-07-2002), Rules 10) (**Madi Sri Vasishnavi v. Dr. N.T.R. University of Health Sciences, Gunadala, Vijayawada and another**) (2008 (3) ALD 8)

**15) District Collector has to take independent decision**

Social Status Certificate – Cancellation of – Enquiry by R.D.O. on the directions of the Hon’ble High Court – Petitioner did not attend enquiry – R.D.O proceeded with enquiry and recorded finding that petitioner did not belong to Scheduled Tribe (Hill Reddy) – Collector, instead of passing of order, reported the matter to State Government stating that petitioner obtained false S.T. Caste Certificate – Petitioner filed appeal before the State Government against the order of the District Collector – Rejected by the Government – Writ Petition against – Held, no order is passed by the Collector on the enquiry

Report of R.D.O. – Collector was directed to issue show cause notice and pass final order – Order of Collector reporting the matter to State Government and Government confirming the same in appeal are set aside – W.P disposed off. (**K. Adinarayna Reddy V. Government of A.P 2004 (5) ALD (NOC) 361**)

**16) Cancellation of certificate- Non supply of report when no material to prove the ST status-No Prejudice caused**

Section 5 – Community certificate – Cancellation of – Non supply of copy of enquiry report of District Level Scrutiny Committee – Would not vitiate orders, when petitioner made no request for supply of a copy of enquiry report, nor she has pleaded as to how her interests are prejudiced by non-supply of enquiry report – Moreover, when she has no material whatsoever to prove her community, mere supply of enquiry report would not have improved her case – Held, therefore, that no prejudice is caused to petitioner on account of non-supply of enquiry report. (**B. Suseelamma V. Collector and District Magistrate, Kurnool and Others**) 2011(5) ALD 142)

**17) Cancellation of Certificate based on clear evidence-No interference warranted.**

AP (SC, ST and BCs) Regulation of Issue of Community Certificates Act 1993 – Section 7(2) – Cancellation of Caste Certificate – Petitioner, resident of Khammam Town elected as Councillor for a ward of Municipality, reserved for BC Candidates – Petitioner belonging to ‘Setti Balija’ equivalent to ‘Telagu’ community not recognized as BC in Khammam District – Only basis on which petitioner claims status of BC being that his forefathers hail from Krishna District – It is not

as if family of petitioner migrated directly from Krishna to Khammam District – In between, the family lived for one generation in Nellore District, where petitioner's father did not claim, nor was accorded status of a BC – There existed a clear discontinuity – Petitioner cannot have a leap over generation of his father and trace his origin to his forefathers – No material forthcoming to substantiate his contention – Matter examined by respondents 1 and 2 objectively and from correct perspective – No basis to interfere with such finding of fact – Order of 1<sup>st</sup> respondent-Government directing cancellation of Caste Certificate of petitioner in exercise of powers under Act and Rules, justified – Writ Petition dismissed with direction that petitioner shall not be subjected to any prosecution, if he, himself, or his children do not claim such status in future. **(Ravvarapu Venkata Siva Nagaprasad Vs. Government of Andhra Pradesh and others, 2009 (3) ALD 396)**

**18) Cancellation of Caste Certificate on proper enquiry - Writ Petition dismissed.**

Caste Certificate – Cancellation of, propriety – Petitioner claimed status of ST, by stating that he is a Konda Kapu, a community prevalent in agency tracts of East Godavari and Visakhapatnam District – Failure of petitioner to prove that he or his family migrated from East Godavari District, and even to reveal name of his native place before District Level Committee constituted under Act/ Rules to enquire into genuinity or otherwise of community/caste certificates – Collector and District Magistrate taking same into account passed impugned order holding that petitioner does not belong to ST community and directing cancellation of caste certificate – Appellate Authority/R1 also examined matter on proper lines while dismissing appeal – Even before High Court petitioner

not able to establish his claim, that he belongs to Konda Kapu community – Writ petition dismissed. (**Pappala Anjaneyalu V. Government of Andhra Pradesh and others 2011 (3) ALD 757**).

**19) Cancellation of Caste Certificate-Show cause notice issued - No interference warranted.**

A.P (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 – Section 5 – Cancellation of Certificate – Show cause notice issued to the petitioner in respect of cancellation – Petitioner cannot maintain a writ petition questioning the same, when the authority has the necessary jurisdiction for issuing the show cause notice – If the petitioner is aggrieved of the final order, the remedy of appeal is open to him. (**Madakam Kiranmai V. District Collector and Magistrate, Khammam and others 2002 (6) ALD 592**)

**20) Issuance of Memorandum intimating enquiry- Interference of High Court not warranted**

Bogus caste certificate – Appointment secured and promotions earned on basis of – issuance of memorandum informing petitioner proposed enquiry against him – Charge against petitioner of grabbing appointment and promotional opportunities in Corporation meant for ST community candidates by filing bogus caste certificate – Interference with, by High Court, scope – Held, memorandum is only a notice, in form of a charge sheet requiring employee to submit his explanation – It does not by itself decide an issue – It is a different matter, whether charge framed against petitioner can be sustained in law - That would depend upon nature of evidence, which parties would adduce – Further, certificate produced by petitioner at time of appointment is to the effect

that he belongs to Boya community – Boya caste or any subset thereof, never treated as Scheduled Tribe and not referred to in list of Scheduled Tribes issued under relevant provisions of Constitution – This aspect also needs to be examined by respondents, in proposed enquiry – High Court would not interfere with show cause notices or charge sheets, unless they are issued by authority not vested with the power – Case on hand is not one such – Petitioner can urge all contentions in enquiry – Writ petition dismissed – (Constitution of India, Article 226) (**M. Koteswara Rao V. Executive Director, Food Corporation of India, Chennai and others, 2011 (2) ALD 496 = 2011 (5) ALT 179**)

**21) Rejection of nomination when Non ST claimed ST reservation**

**Section 3** – Caste certificate – Validity – See, Representation of the People Act 1951, Sections 83,33(2), 36(2)(b) and 100 (1) (c) – Election petition- Cause of action – Rejection of nomination on ground that petitioner does not belong to Scheduled Tribe. (**Anantha Udhaya Bhaskar Rao v. Election commission of India, New Delhi and others, 2014 (2) ALD 499**)

**22) Cancellation of Caste Certificate valid when claimant failed to prove his status.**

Andhra Pradesh (SC,ST and BCs) Regulation of Issue of Community Certificates Act, 1993 – Section 9 – Cancellation of caste certificate – Writ petition filed questioning the cancellation of certificate issued by the Tahsildar that the petitioner belongs to caste Mannevarlu (Scheduled Caste) – In the enquiry the petitioner could not discharge the initial burden by proving his caste- No witnesses examined and no

documents filed in support of the claim of the petitioner – Though the petitioner neither studied nor resided in Secunderabad, he obtained certificate from Tahsildar, Secunderabad – Hence, the cancellation is valid – Writ Petition dismissed. (**M. Balakrishna Rao V. Joint Collector and Addl. Magistrate, Hyderabad**) 2001(2) ALD 66)

Section 9 – Cancellation of caste certificate – Writ Petition filed questioning the cancellation of certificate issued by the Tahsildar that the petitioner belongs to caste Mannevarlu (Scheduled Caste) – In the enquiry the petitioner could not discharge the initial burden by proving his caste – No witness examined and no documents filed in support of the claim of the petitioner – Though the petitioner neither studied nor resided in Secunderabad, he obtained certificate from Tahsildar, Secunderabad – Hence, the cancellation is valid – Writ petition dismissed. (**2001 AILD 573**)

**23) Issue of Caste Certificates on provisional basis - Not proper - Rational method emphasised.**

If the state authorities start issuing ‘provisional’ certificates on caste status and after admission to reserved seat, the caste finding is reversed, it creates problem for the selected candidates as well as for others. Therefore, the Supreme Court asks the Maharashtra government to think of a rational method to issue such certificates.

**Facts:** A candidate was selected on the strength of a provisional caste certificate issued by the concerned authority that he belonged to ‘Halba’, claimed to be ST in Maharashtra. But his selection was challenged on the ground that Halba was not a ST. The Bombay High Court held it was ST and therefore the candidate was qualified for reservation. This was challenged by the state government in the Supreme Court.

**Ruling:** The Court did not disturb the High Court judgement. However, it clarified that the High Court judgement would be applicable only in the case of this particular candidate, and none else. The certificate issued in his favour shall be valid. But the larger question decided by the High Court as to whether Halba was a ST was kept open. It would be open to the state government to raise that question again. The Supreme Court declined to give a finding in this judgement.

But the Supreme Court stated that to avoid disputes like this one where admission is granted on a provisional certificate which is liable to be varied or cancelled at a later state causing irreparable harm and keep frustration to the candidate who secured admission on a provisional certificate the state government should devise a more rational method for getting much in advance a certificate on the strength of which a reserved seat is claimed. The present method of issuing a provisional certificate which can be invalidating at a later state is objectionable for more than one reason.

“We consider it more desirable that the government shall devise a proper procedure which must commence soon after the candidate clears examination by the board at the end of class X in secondary school, for issuing the final certificate after making whatever necessary enquiry they may want to initiate before the certificate can be granted and submitted for admission on passing the higher secondary examination. The intending candidate may be directed to preferably make the application as soon as or soon after he gets admission in XI standard. On receipt of the application, the enquiry may start as early as possible and the candidate will have to submit to such enquiry to obtain a regular certificate. Whatever enquiry is to be held must be completed at least two months before the result of the higher secondary examination is declared, where



after one becomes eligible to seek admission to a medical college'. (**State of Maharashtra Vs. Abhay AIR 1985 SC 328**)

- 24) Maintainability of Writ when alternative remedy available.**  
**Section 5** – Community Certificate – Cancellation of – Writ Petition, without exhausting remedy of appeal, maintainability – Held, where impugned order was passed in 2000, it may not be proper to ask petitioner to go and avail alternative remedy of appeal at this length of time- Further, where petitioner alleged violation of principles of natural justice, a writ petition automatically lies, albeit contention of petitioner not accepting – (Constitutional of India, Article 226) (**K. Jhansi Rani v. District Collector and District Magistrate, Chittoor and others, 2014 (2) ALD 222**)

**Principles of Natural Justice violated or not?**

- 25) Cancellation of certificate without notice – Violation of Principles of Natural Justice**

Constitution of India, Arts. 335, 341 226 – Scheduled caste Certificate – Cancellation of – Natural justice – Certificate issued stating that appellant belongs to Maghbi Sikh Caste which is recognized as Scheduled Caste – On enquiry conducted it is found that appellant belongs to Christian Community – Cancellation of SC certificate without using show cause notice to appellant – Violative of principles of natural justice – Certain rights can be said to have accrued to appellant on issuance of SC certificate. (**Gulzar Singh V. Sub-Divisional Magistrate and another**) (**AIR 1999 SC 3803**)

- 26) Informing no ST certificate issued by MRO-Principles of natural justice not attracted.**

A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community certificates Act 1993 – Caste

Certificate – Enquiry into genuineness of, made by MRO/R1 on request of employer of petitioner/R2 and by impugned letter R1 informed R2 that his office did not issue certificate and that one brought to his notice is not genuine – Such communication does not partake character of an order determining or affecting rights of petitioner – R1 not required to conduct enquiry or issue notice to petitioner – Principles of natural justice not attracted – Petitioner may institute a suit for declaring that certificate by him is genuine – Writ petition dismissed. (**Adapa Bennayya Vs. Mandal Revenue Officer, Paderu, Visakhapatnam District and others.**) 2001 (1) ALD 470)

**27) Cancellation of Certificate without furnishing relevant Statements and reports- Violation of Principles of Natural Justice.**

A.P. (SC, ST and BCs) Regulation of Issue of Community Certificate Act, 1993 – Section 5(1) – Cancellation of false Caste Certificate – Valmiki (S.T.) Community Certificate obtained by petitioners on different occasions from Tahsildar - Cancellation of, by third respondent/District Collector in exercise of powers conferred on him under Section 5(1) of Act – Writ petition – Held, that Act came into force on 16-5-1997 and impugned order was passed on 18-3-1997 – This fact is of no consequences since even prior coming into force of Act i.e., 16-5-1997, the 3<sup>rd</sup> respondent was competent authority to exercise powers under Section 5 of Act – Petitioner not afforded reasonable opportunity since copies of relevant statements and reports not furnished to him – Order passed in violation of principles of natural justice, held liable to be quashed – Writ petition allowed. (**Duda Ramesh and others V. State of A.P and others** 2005 (2) ALD 374)

**28) Cancellation of certificate without furnishing the report of Scrutiny Committee-Violation of Principles of Natural Justice**

A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act 1993 – Section 5 – Community Certificate – Cancellation of, by District Collector basing on report of District Scrutiny Committee – Report not furnished to petitioners – Violation of principles of natural justice – Collector’s order, held vitiated – Order of Government in dismissing appeal, bereft of reasons, amounts to violation of principles of natural justice – Impugned orders liable to be set aside – (A.P (SC, ST and BCs) Regulation of Issue of Community Certificates Rules 1997, Rule 8) **(Jadhav Rekoba and others Vs. Government of Andhra Pradesh and others 2009 (2) ALD 296)**

**29) Cancellation of certificate without furnishing of Preliminary report- Violation of Principles of Natural Justice.**

Section 9 – Rule 14 of the rules framed under the Act – Enquiry conducted by the scrutiny committee without furnishing copies of the preliminary reports submitted by revenue Divisional Officer and the material collected by the scrutiny committee – No opportunity given to the candidates to cross-examine the witnesses – District collector before cancelling the caste certificates did not furnish a copy of the report of the scrutiny committee and did not give any opportunity to made any representation – Held, in the circumstances, the enquiry is vitiated by non-observance of due process of law and procedural fairness—Impugned order set aside and the matter remanded back to the scrutiny committee to conduct a fresh

enquiry – (M. Karunakar and another V. State of A. P. and others, 2001 (2) ALD 18)

**30) Cancellation of Certificate without furnishing reports against the petitioner-Violation of Principles of Natural Justice.**

Service – Disciplinary action – Enquiry officer held that the petitioner belongs to Scheduled Caste – But the disciplinary authority without giving any notice to the delinquent dismissed the petitioner from service basing on the report of Joint Collector that caste certificate given to the delinquent has been cancelled – Held, violative of principles of natural justice and hence the impugned order cannot be sustained.

Services – Disciplinary action – Charge sheet served on the petitioner on 25-01-1993 – enquiry officer submitted his report in favour of the delinquent on 17-3-1995 – Final order of discharge passed on 5-6-2002 Held, in view of the long lapse of 9 years, the order is liable to be quashed.

A.P (Scheduled Caste, Scheduled Tribe and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 – Section 4 – Cancellation of certificate issued to the petitioner that he belongs to Scheduled Caste – Prior to the order of cancellation the enquiry was conducted by two different officers who gave conflicting reports- Cancelling the caste certificate basing on the report given against the petitioner without furnishing copies of the report – Illegal being violative of principles of natural justice. **(Bhakthavathsala Sukumar V. Hindustan Petroleum Corporation Limited, Visakhapatnam and others) (2003 (4) ALD 25)**

**31) Cancellation of certificate without show causes notice -  
Violation of Principles of Natural Justice.**

A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Section 5(1) – Caste certificate – Cancellation of, without giving person affected reasonable opportunity of putting forth his case, illegality – District Level Committee reported to District Collector that petitioner did not belong to Nayaka community – Before so reporting Committee issued no show cause to petitioner to offer explanation on opinion of committee – It merely directed petitioner to appear before them – After petitioner appeared before them, they reported matter to District Collector – District Collector bye-passed procedure and passed impugned order cancelling caste certificate without issuing any show cause notice to petitioner – Principles of natural justice violated as no reasonable opportunity accorded to petitioner before impugned order was passed – Writ petition allowed – Impugned order set aside – District Collector directed to issue show cause notice to petitioner as envisaged under S. 5 of act and to pass opportunity to petitioner – A.P (S.Cs, S.Ts, and B.Cs) Issue of community Nativity and date of Birth Certificates Rules 1997, Rule 9 (6) (Para 22, 24)

A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Section 7(2) – Order of District Collector – Remedy of appeal against, before Government – Availability of, under S. 7(2) no bar to maintainability of writ petition, when petitioner sought not only for setting aside impugned order, but also challenged provisions of Act and Rules as ultra Vires – Neither District Collector nor the Government has power to determine vires of Act and Rules –

Petitioner, held entitled to invoke Article 226 of Constitution –It does not matter that petitioner ultimately gave up plea regarding vires of provisions of Act and Rules – Writ petition does not offend S. 7(2) and as such maintainable – (A.P (S.Cs, S.Ts, and B.Cs) Issue of community, Nativity and Date of Birth Certificates Rules 1997) (Para 23)

A.P (S.Cs, S.Ts, and B.Cs) Issue of Community, Nativity and Date of Birth Certificates Rules 1997 – Rule 21 – Scope – Rule 21 merely envisages that a person, who has already obtained a community certificate before commencement of Rule need not obtain community certificate afresh – It does not hold that no enquiry can be conducted in respect of community certificate issued prior to commencement of Rules S.5 of Act, which provides for cancellation of a community certificate issued prior to commencement of Act, if obtained an false representation, controls R21 of |Rules – Further, R.9 of Rule refers to enquiry into fraudulent claims and cancellation of community certificate – Rules 2(b) of Rules makes it clear that Rules are framed with reference to Act – Thus, Act and Rules envisaged procedure for cancellation of community certificate which was issued prior to commencement of Act – (A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of community Certificates Act 1993, Section 5 ) (Para 9)

A.P (S.Cs, S.Ts and B.Cs) Issue of Community, Nativity and Date of Birth Certificates Rules 1997 – Rule 9 – Community of a person –Enquiry into, scope Community of a person cannot be decided on strength of name of street in which one has been residing – There must be independent enquiry before community of an individual is decided – Finding of revenue authorities that petitioner is a Boya by community by virtue of fact that he has been residing in Boya street cannot be

accepted – Community of petitioner shall be determined on independent evidence.

A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 1993 – Section 5 – Community certificate – Enquiry into and cancellation of, not barred merely because it was issued prior to commencement of Act – See, A.P (S.Cs, S.Ts and B.Cs) issue of community, Nativity and Date of Birth Certificates Rules 1997, Rule 21 –Scope. (**U. Sanyasi Rao Vs. Government of Andhra Pradesh and others 2011 (3) ALD 217**)

### **32) Effect of A.P Community Certificate Act and Rules**

#### **1) AP Community Certificate Act is prospective in nature.**

- 1) A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 – Section 5 and 7 – Enquiry into the validity of the community certificate issued to the petitioner concluded long prior commencement of the Act – Though orders are passed after the Act, no appeal is maintainable against the order under Section 7.
- 2) Social Status – Caste certificate – petitioner obtained a certificate that he belongs to Holva community but not to Holva Community which is a Scheduled Tribe – In the school records, his caste has been entered as Orissa Brahmin – Petitioner could not produce any certificate evidencing his caste, though he filed certificates issued by MLA and MPs, issue the same – In the circumstances, the cancellation of certificate is valid. (**Gangadhara Palo V. Revenue Divisional Officer, Palakonda and another 2001 (6) ALD 526 (DB)**)

#### **2) Rules in question were struck down by HC.**

Section 20 – Rules 9(3) and 9(9) – Declared ultra vires as they run counter to the provisions of the Act and prescribe an enquiry frustrating the very objective of the Act. – (**M. Karunakar and another V. State of A.P. and others, 2001 (2) ALD 18**) (**M. Balakrishna Rao V. Joint Collector and Addl. Magistrate, Hyderabad, 2001 (2) ALD 66**)

**3) Rules are not retrospective.**

Rule 11 – Rules are not retrospective – When the students seeking admissions have produced certificates issued to them earlier to the commencement of the rules, they cannot be straightaway be refused and the students directed to produce fresh certificates issued prior to the rules in view of Rule 21 unless they are cancelled – Only if any complaint is made regarding the genuineness of the certificates, they can be got verified by the District Collector and the students should be given a chance to produce said certificates, before rejecting the earlier certificates – (**P. Jayaramaiah Vs. Convenor, EDCET-98, S.V. University, Tirupathi, 1999 (3) ALD 581**).

**4) Rules are comfortable to directions issued by SC**

A.P. Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act ( 15 of 1993) S. 1-A.P Scheduled Castes, Scheduled Tribes and Backward Classes Rules for issue of Community Certificates Rules 1973 (Draft rules) R-1 Issue of Community certificate –Rules are substantially comfortable to directions issued by the SC in the behalf. (**Director of Tribal Welfare (Appellant) Vs Lavete Giri and other, AIR 1997 SC 2046**)

**5) The rules to curb on the power to issue certificate, up held.**

Issuance of caste certificates has caused a number of scandals. The Tamil Nadu government put some curbs on the power to



issue certificates to a certain tribe. This was challenged in the Madras High Court, but the court upheld the rule.

**Facts:** Two petitions were filed by members of the Konda Reddi ST community challenging the state government order issued by the Social Welfare Department. According to the order, the power to issue community certificate to members of Konda Reddi ST community was vested only in the Revenue Divisional Officers instead of Tahsildar who were issuing such certificates till then. The order also specified the nature of proof which had to be adduced before the certificate was issued. There was no doubt that Konda Reddis are listed in the 1950 Presidential Order relating to S Ts. The argument against the order was that it was discriminatory. Konda Reddis alone were selected for certificates from a superior revenue officer for which there was no basis. Therefore, it violated the equality provision in Article 14 of the Constitution. Further, it was argued that while the central government had specified Tahsildars and others for issuing caste certificates in its 1975 order, the state government could not depart from that order. The government submitted that persons from communities with similar sounding name as Konda Reddis were getting the benefits for ST by easily getting caste certificates from Tahsildars. The order was passed to protect the genuine ST Community.

**Ruling:** The High Court dismissed the petitions, and stated that the government order was not discriminatory. Konda Reddi was in fact picked out, but that was because there was another competing forward community which wanted to take advantage of the privilege intended for the ST. Therefore,

there was a rational basis for the discrimination. The object could be achieved only by taking away the power of the Tahsildar. It was not violative of Articles 14 or 15(1).

The fact that no Tahsildar had been prosecuted or dismissed for issuing false certificates was not a deciding factor. But there were a number of complaints that such certificates were being issued. Protecting the ST from other communities was different from punishing defaulting Tahsildars. Merely because the government had not taken action against erring Tahsildars did not mean that it could not take away their powers and vest them on a superior authority.

Regarding the power of the state government to vest powers, the court examined the 1975 central government regulation and found that it had only limited application, i.e. in employment in central services. (**K. Viswanathan Vs. Government of Tamil Nadu AIR 1985 Madras 139**).

### CHAPTER - III

#### SCRUTINY OF DOCUMENTS AND ITS VALIDITY FOR DETERMINATION OF SOCIAL STATUS.

##### 1) Mere recitals in documents without any corroborative evidence cannot form basis for Caste Certificate

- (A) Constitution of India, Arts, 226, 341 – Caste Certificate – Grant of, by Tahsildar after conducting enquiry and giving opportunity of hearing to party and on considering relevant documents - Is valid.
- (B) Constitution of India, Art, 341 – Caste Certificate – Considerations – Mere recitals in documents that candidate belongs to particular caste without supported by independent corroborative material – cannot form basis for caste certificate.
- (C) Constitution of India, Art, 226 – Writ jurisdiction – Interference – Special Committee constituted to give finding of fact on question as to whether certain person belongs to certain tribe or not – Committee considering all evidence and giving finding – Another view possible – No ground to reverse findings of Committee.
- (D) Constitution of India, Art, 342 – Constitution (Scheduled Casts) Order, 1950 – Constitution (Scheduled Tribes) Orders, 1950- - Social status certificate to members of Scheduled Caste or Scheduled Tribe – Procedure for issuance of, their scrutiny and their approval indicated. ((C. Sunil Krishnan Vs. State of Kerala and others.) AIR 1997 Kerala 63)

##### 2) Validity of School Certificates of Pre Independence period

Constitution of India, Art. 15(4), 342- Issuance of caste certificate document pertaining to father as belonging to

scheduled tribe not acceptable as it is documents probative value or adjudication of father claim to such caste must be proved – School leaving certificate of grandfather of pre Independence period has mere probative value. (**Ku. Mandan Narayab Sonkusara Vs. State of Maharashtra**) (AIR 1998 Bombay 226)

**3) School record is a relevant factor to be considered in determining the social status.**

**Rule 8** – Social Status – Determination, school records, relevance – Merely because in a 30 year old document social status of petitioner was shown as Scheduled Tribe, petitioner cannot contend that he belongs to Scheduled Tribe – Under S.90 of Evidence Act, a presumption can be drawn regarding genuineness of a 30 – year old document, but not regarding truth of contents thereof – But, school record is one of relevant factors to be considered under R.8(d)(5) of Rules to determine social status certificates show social status of petitioners as belonging to Scheduled Tribe, it is strong factor to support contention of petitioners that they belong to Scheduled Tribe – [Evidence Act 1872, Section 90].(**Danala Appa Rao v. District Collector and District Magistrate, East Godavari, Kakinada and another, 2014(1) ALD 180**)

**4) Validity of School records of Pre Independence period and Procedure for scrutiny indicated.**

- (A) Constitution of India, Art 342 – Constitution (Scheduled Tribe ) Order (1950) – Claiming admission in Maharashtra on basis of certificate as to being a member of Scheduled Tribe, Called Mahadeo Koli – School record pertaining to admission of his, fathers, pertaining pre-independence period showing caste mentioned as Hindu Koli – School record of pre-independence

period carries greatest probative evidentiary value and candidate cannot get benefit of being member of Scheduled Tribe in question – Other documents produced to show caste cannot be relied upon in the face of School record relating to candidate's father.

- (B) Constitution of India, Art, 226 – Writ jurisdiction – Interference – Special Committee constituted to give finding of fact on question as to whether certain person belongs to certain tribe or not – Committee considering all evidence and giving finding – Another view possible – No ground to reverse findings of Committee.
- (C) Constitution of India, Art, 342 – Constitution (Scheduled Casts) Order, 1950 – Constitution (Scheduled Tribes) Orders, 1950 - Social status certificate to members of Scheduled Caste or Scheduled Tribe – Procedure for issuance of, their scrutiny and their approval indicated. (**Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others. AIR 1994 SC 94**)
- 5) Caste certificates of blood relations cannot be considered as conclusive proof.**

This case highlights the problem of bogus caste certificates issued by the authorities without proper verification. It also refers to harassment caused to genuine backward class members. In the matter of law, the Bombay high court rules that caste certificates of blood relations cannot be considered as conclusive proof to decide the issue.

**Facts:** The petitioner had two daughters and both of them were shown in the school register as belonging to the Lohar caste. Later he got the Tahsildar's certificates to change the caste from Lohar to Gadi - Lohar, which is a nomadic tribe

entitled to reservation in medical admissions. When the two girls applied under ST quota, the caste verification committee rejected their claim after interviewing the father and the girls. The following were some of the reasons. The caste certificates were not in the proper form; the birth certificate was manipulated; the girls had never claimed the concessions to the ST before; they claimed that their occupation was carpentry while that of Gadi-Lohar are wanderers who work as polishers, tinkers and knife-sharpeners; the deities worshiped are different as well as the customs. They brought evidence to show that two of their distant cousins had got medical seats with ST certificates. So they also belonged to the same ST.

**Ruling:** The Bombay high court dismissed their petition, disbelieving their claim to ST certificates. It said that each case must turn on facts of that case. Prior orders one way or the other regarding relatives would be but one circumstance to be considered in a caste enquiry, But they cannot be conclusive either way, Caste certificates of blood relations cannot become conclusive proofs. At the most, such certificates of blood relations can be used as guidelines and/or a circumstance to be taken into consideration but along with the other evidence on record.

In this case, the court found that the certificates were bogus. The certificates of their cousins were of no use on the above reasoning. Moreover, the cousins also obtained bogus certificates, according to the court. "They, however, have been lucky in escaping detection and in getting admission to medical course."

Article 15(4) of the Constitution provides for reservation for backward classes. But "unscrupulous and dishonest" persons never fail to defeat these 'massive and far-reaching endeavours

made by a democratic nation to integrate an oppressed, depressed and excluded population into the mainstream of national life," the judgement stressed.

The court noted that executive magistrates were issuing bogus certificates and harassing genuine backward class members. It asked the government to take action against the authorities indulging in this practice. The Government's undertaking to do so was noted in the judgement. **(Devidas Hajare Vs. State of Maharashtra AIR 1987 Bombay 354)**

**6) Procedure to be followed for obtaining regular community certificate instead of ST certificate for education purposes**

Scheduled Castes/Tribes – Social status certificate – Limiting validity for educational purpose only – Legality – A.P (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificate Act 1993, Section 20(1); A.P (SC, ST and BC) issue of Community, Nativity and Date of Birth Certificate Rules 1997, Rules 3,4 and 5.

A.P (SC, ST and BC) Regulation of issued of Community Certificate Act 1993 – Section 20(1) – A.P (SC, ST and BC) Issue of Community, Nativity and Date of Birth Certificate Rules 1997, Rules 3,4, and – Social status certificate – Limiting validity for educational purpose only – Legality – Issue of caste certificate by MRO in favour of petitioners that they belong to Bhagatha caste, a recognized Scheduled Tribe under Constitution (Scheduled Tribe) Order 1950 – Said certificate issued only limited purpose i.e. education only – Petitioners have to approach competent Authority by making necessary application obtaining regular social status certificate and

Competent Authority shall follow procedure prescribed by Act and Rules. (**V. Lalitha and another V. State Of Andhra Pradesh and Others 2005(1) ALD 688**)

**7) Certificate cancelled- School Admission record tampered.**

Constitution of India, Arts. 341, 342 – Scheduled Tribe – Status – Caste of a candidate registered in school admission register as “Hindu Reddy” – Subsequently interpolated as “Konda Reddy” in different ink – His father though in State Service not availing of benefit of reservation as Scheduled Tribe – Could not be said that candidate established his status as Scheduled Tribe. (**S. Nagarajan V. District Collector, Salem and others. AIR 1997 SC 935**).



#### CHAPTER - IV

#### COMMUNITY CERTIFICATE ISSUES - INTER CASTE MARRIAGES AND CHILDREN BORN OUT OF WEDLOCK

- 1) **Father is non Tribal - Mother is tribal-The claimant was never living as a tribal to which her mother's family belongs - No Community acceptance - ST Status not Permitted-Election set-aside.**

Election Laws – Constituency reserved for Scheduled Tribe – Appellant, alleged to be from forward community, elected as MLA from said constituency- Her mother though belonged to notified Scheduled Tribe, married person from forward community – Appellant legitimate daughter of her parents – Appellants election from Constituency reserved for Scheduled Tribe liable to be set aside – Representation of People Act 1951, Section 81 r/w sections 100 and 116A.

Representation of People Act 1951 – Section 81 r/w Sections 100, 116A – Elections – Constituency reserved for Scheduled Tribe – Appellant elected as MLA from said constituency – Election petition on ground that appellant belonged to Patnaik Sistu Karnam caste, a forward community – Appellant contended that her mother belonged to Bhagata Community, a notified Scheduled Tribe – Her mother was concubine of Patnaik Sistu Karnam – High Court held that there was marriage between father and mother of appellant and that appellant was legitimate daughter of her parents – Since appellant's father belonged to Forward Community, appellant's Election from Constituency reserved for Scheduled Tribe has to be set aside. (**Sobha Hymavathi Devi V. Setti Gangadhara Swamy and Others**) (2005 (2) ALD 53 (SC))

**2) Caste is acquired by birth- Children born out of inter caste marriages belong to the caste of father.**

I. Constitution of India – Article 341 and 60 – Scheduled Castes – No person who belongs to forward class can claim to be one belonging to the Scheduled Caste – Caste is acquired by birth – The Children born out of inter caste marriages belongs only to the caste of father but not that of their mother

II. Services – Appointment – Third respondent who belongs to forward caste got employed in a post reserved for Scheduled Caste, by falsely claiming that she belongs to Scheduled Caste by virtue of marriage with a Scheduled Caste person – she cannot claim any equities on the ground of long lapse of time after her appointment -Petitioner who belongs to Scheduled Caste is eligible to be appointed, provided that she is found eligible to the post – Orders passed accordingly. (**Sree Venkateswara University, Selection Committee, Tirupathi and others (1999 (2) ALD 69)**)

**3) The status of off spring out of wedlock between tribal woman and upper caste Hindu- The circular permits the off spring to claim the Status of ST Woman if community accepts- Not invalid.**

The Jharkhand high court examined the status of a child born out of a marriage between a tribal women and an upper caste Hindu in the judgement. The society challenged a circular issued by the state government which stated that the offspring born out of the wedlock would be accorded the status of scheduled tribe to which the woman belonged on condition that her tribe accepts the marriage and takes the couple into its fold. The circular asked the officials to hold enquiries to determine whether such marriages have been accepted by the

tribes. The society's grievance was, according to the judgement, that the circular "tended to violate the rights of the tribal women and the tribal society as such and if the circular was not quashed the offspring born out of the marriage in question would be unduly benefited, being granted the certificate as belonging to ST". The state circular was based on a communication of May 21, 1997 issued by the Home Ministry of the Government of India to the Chief Secretaries of all states. The high court dismissed the challenge to the circular. It rejected the argument of the society that the circular modified or changed the list of ST. It therefore did not violate Article 342 of the Constitution which empowered the President to publish the list of ST. It has been done in 1950. The high court stated that the circular did not in any way impinge upon the power of the President in this respect. The circular did not change the tribals list, it was only explanatory "or at least clarifactory instruments to cater to an unforeseen fact situation not conceived in normal circumstances". (**Society for Protection of Adivasi Right V State AIR 2002 Jharkhand 17**)

**4) Social Status will not change after marriage:**

Constitution of India, Art.366 (25) –Person belonging to Scheduled Tribe – Marrying person belonging to non-Scheduled Tribe shall be treated to be person belonging to non-scheduled tribe after such marriage followed decision AIR 1973 SC 1406.

Constitution of India, Art 226 Education- Admission – Student Seeking admission to educational course by false claim to be a member's of certain tribe – he cannot lay claim to continuance in studies on ground of enquiry or promissory estoppels – one claiming enquiry must come with clean hands

– There is no estoppels as no promise of social status is made by the State when false plea is raised for social status. (**Atulchandra Adhikari Vs. State of Orissa. - AIR 1995 Orissa 233**)

**5) No proper enquiry in determining ST status on the basis of 371 G O- Enquiry ordered.**

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 – Sections 10, 13 and 14 – Petitioner, a daughter alleged to have been born to a Forward Class father and a Scheduled Caste mother claiming a seat in Medical College on the basis of the Certificate obtained from Mandal Revenue Officer on the ground that she belongs to Scheduled Caste – She never claimed on the basis of her caste at any time in her whole academic carrier or even in the application for admission to Medical College – Only when she did not get the required rank in EAMCET, she made a claim on the basis of her Caste – Mandal Revenue Officer also issued a certificate in a hasty manner without following the procedure prescribed by Supreme Court – Held, claim of the petitioner cannot be entertained – No direction can be issued to the respondents to consider her case for admission on the basis that she belongs to Scheduled Caste.

In the instant case, admittedly the petitioner never claimed herself to belong to Scheduled Caste. She never claimed any scholarship or preferential treatment at crucial stages of her education, namely, VII Class, X Class and at the stage of 10+2. Nor she claimed that she should be considered for an MBBS seat earmarked for Scheduled Caste. In fact, as submitted by the learned Counsel, while applying for MBBS pursuant to the Notification issued by the University of Health Sciences, she never claimed reservation as belonging to Scheduled Caste.

In fact, as it may, the petitioner's father conceived the idea when things came clear that with her revised rank of 03419 she would not get a medical seat in OC category. He approached the Mandal Revenue Officer, Kurnool who issued proceedings on 10-11-1999 stating that the mother of the applicant has been residing in the Scheduled Caste locality along with other children and that she was brought up in the same locality. Based on these proceedings, a certificate is issued as per G.O. Ms. No. 371 dated 13-4-1976. The Mandal Revenue Officer, Kurnool is not a party to this proceeding. The certificate and the proceedings of the Mandal Revenue Officer dated 10-11-1999 do not appear to be credible. In fact, the inquiry alleged to have been conducted by MRI-I, Kurnool, based on which the proceedings of the Mandal Revenue Officer were issued, is not in accordance with the procedure of inquiry mandated by the Hon'ble Supreme Court. (Para 8)

The proceedings of the Mandal Revenue Officer, Kurnool and the community certificate issued pursuant to the alleged enquiry by the MRI-I do not inspire confidence of any reasonable man that proper procedure is followed. There is a lurking suspicion with this Court that all is not well with the way the enquiry is conducted by the MRI-I as well as the Mandal Revenue Officer, Kurnool. These matters shall be looked into by the District Magistrate and the Collector, Kurnool and appropriate action, including disciplinary enquiry and launch of prosecution, be ordered by the District Collector against the erring persons including the Mandal Revenue Officer, Kurnool and the MRI-I, Kurnool, and others responsible, under sections 10,13 and 14 of Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes )Regulation of Issue of Community Certificates Act, 1993,

after duly following the principles of natural justice. (Para 4).  
**(A. Pratyusha Vs Registrar, NTR University, A.P (2000 (1) ALD 639)**

**6) G.O. Ms. No. 371 is not applicable to Inter religions**

A.P (SC, ST and BC) Regulation of Issue of Community Certificates Act, 1993 – Section 5 – G.O. Ms. No. 371, dated 13-4-1976 – Social status of the petitioner – The mother of the petitioner is a converted Christian and the father of the petitioner is a Muslim who married her – No evidence to show that the family of the petitioner was accepted by the christen community – Held, the petitioner cannot claim the status of BC-C – G.O Ms. No. 371 cannot be invoked since it applies only to inter-caste marriages but not to inter-religious marriages. **(M. A. Salam V. Principal Secretary to Government of A.P Backward Classes Welfare Department, Hyderabad and others 2003 (1) ALD 699)**

**7) Preference to Children of Inter Caste Marriages-Constitutional.**

The Madras high court upholds the preference given in medical admission to children of inter-caste marriages between backward classes and forward communities, while lower preference is given to children of inter-caste marriages between backward classes.

**Facts:** In the category of reservation, the Tamil Nadu gave preference to children of inter-caste marriages to promote integration of society. Preference was given first to “children born of inter-caste marriage between SC/ST and forward communities” and then to “Children born of inter-caste marriage between SC/ST and Most Backward Class/

Backward Class communities.” The two petitioners were born of an inter-caste marriage between backward classes. As the reservation rules talked about ‘inter-caste’ marriages, they contended that the preference given to the children born of inter-caste marriage between SC/ST and forward classes was discriminatory and violative of Article 14 of the constitution. Though reservation for children born out of inter-caste wedlock was constitutional, the preference given to children born of parents one of whom happened to belong to SC/ST was discriminatory, it was argued. The government contended that the reservation policy was permitted by the Constitution and was meant to encourage inter-caste marriages. The government had power to do so, it emphasized.

**Ruling:** The Madras high court dismissed the petition and upheld the reservation criteria as constitutional. It said that the state was bound morally and legally to give special recognition to marriages of the caste Hindus with members of SC/ST because such marriages remove imbalances in society to a greater degree than marriages between members of the backward classes. Any welfare state committed to remove untouchables and usher in equality must give preference to a marriage in which a member of a forward community or a backward class marries a member of SC/ST. Therefore, the state is entitled to give preference in the reservation was essentially in the nature of children born of inter-caste Hindus and belonging to SC/ST,” the court ruled.

The court rejected the argument made by the petitioners that preference should logically go to inter-religious marriages than to inter-caste marriages. The preference was given, said the court, to remove the evil of untouchability. Even though the Muslims and Christians fall outside the fold of the Hindu

community, they do not suffer from the disgrace of untouchability. On the other hand, SC/ST is given less than human status, and reservation was given to remove this injustice, the judgement concluded (**Hari Ganesh Vs. State of Tamil Nadu AIR 1987 Madras 55**)

**8) Offspring born out of inter caste marriage couple-offspring would not take automatically the caste of either the father or mother - Community acceptance as ST is crucial- Benefits under G. O. No. 371 not permissible**

Social Status – Scheduled Castes and Scheduled Tribes – Presidential Order, 1976 – G.O. Ms. No. 371, Employment and Social Welfare Dept., date 13-4-1976 – Social status of Children will go with social status of father but not with mother – Offspring born out of wedlock of inter-caste marriages cannot claim the social status of mother – G.O issued extending benefits to children born to couple of inter-caste marriages based on their mother’s status as SC,ST or BC – ultra vires executive powers of State and of Constitution – G.O. cannot override Presidential Order – Petitioner born to Balija father but securing seat in first year MBA course reserved for S.T. community on the basis of his mother’s community as Konda Kapu recognized as Scheduled Tribe and completing two years course by obtaining interim directions from Court – Petitioner held to be not entitled to be treated as Konda Kapu and to benefits meant for S.T candidate for employment or for any other purpose to get benefits exclusively meant for S.Ts – Instances how benefits meant for S.T are being knocked off by candidates adopting different modus operandi given – Held that unfounded sympathies cannot be extended to each such case – Suggestion made to Government to create certain



percentage of seats to the categories covered by the aforesaid G.O. and not to allot them the seats meant for S.Cs and S.Ts.

Section 20(1) – Rule 8 of the Rules framed under the Act – Appellant claiming to be a member of Scheduled Tribe on the basis of Community Certificate issued prior to the “Act -

Writ petition filed by her questioning the directions issued by the Commissioner of Tribal Welfare to the appellant to appear herself before the Director TCR & TI to prove her claim – Rule 8 prescribes the procedure for conducting an enquiry in this regard – As per the said procedure, direction issued to the Scrutiny Committee at the District Level to consider the case of the appellant and also for provisional allotment of a seat in accordance with Rule 19 for a period of four months – Meanwhile the Scrutiny committee shall complete the enquiry and submit its report to the Collector, who has to act accordingly. – Sankaravarsam Sasidevi V. Commissioner of Tribal Welfare, Telugu Sankshema Bhavan, Hyderabad and another. (**W.S.V. Satyanarayana Vs. Director of Tribal Welfare, A.P. at Hyderabad and others 1996 (1) ALT 170**)

- 9) The claimant not permitted to enjoy constitutional benefits after decision against him by the Divisional Bench of High Court-Appellant and his off spring not to be treated as ST.**

Social Status – Scheduled Tribe – Manya kapu – consequences of a person joining service as S.T at a time when the said community was held to be S.T by High Court (single Judge) and enjoying benefits as ST for several years on that basis which judgment as overruled later by a Division Bench of High Court holding it to be not ST – Entitlement of such person to equalities – Appellant belonging to Manya Kapu not made

any false representation that he was ST – Got appointment and promotion under reserved category and served for number of years on the law then existing – Government also written to Government of India to include that community as ST based on Single Judge’s decision of High Court – Government of India conveying approval and stating that steps were being taken to include it in next Bill before Parliament – Right to be appointed and promoted to the reserved post accrued to appellant based on the then existing state of law though it is reserved subsequently – held that appellant is entitled to equities to retain the present post – Caste certificate issued in his favour is non-est in the eye of law because of later Division Bench Judge of High Court – He is not therefore entitled to further benefits reserved for ST candidates – Appellant and his offspring not to be treated as ST for any purpose hereafter. **(I. B. Rajendra Prasad Vs the Director of Tribal Welfare) 1996(2) ALT 862(D.B)**

**10) Customary Marriage gives the Status of ST to a non tribal wife- Peculiar case.**

Through these case raised questions of corruption in an election petition, one important argument was regarding the status of a non-tribal marrying a tribal. The Supreme Court held that in this particular case, the customary marriage gives the status of a tribal to the non-tribal wife.

**Facts:** In the by-election to Khunti (ST) parliamentary constituency in Bihar, Jahan Ara filed nomination papers. She stated that she was the widow of a member of the Munda ST. Another candidate objected to her claim, stating that she was a non-tribal. Her nomination was rejected. After Horo was elected, she filed an election petition alleging that her nomination was wrongly rejected. According to her, when a Munda male married outside his tribe and his marriage was

accepted by the tribe, he continued to be in his tribe and his wife also acquired its membership. She stated that she was Tamil by birth. She married her tribal husband according to the Munda custom, in the presence of the tribal elders. It was argued that the returning officer's stand that the membership of Munda tribe could be got only by birth was wrong. Therefore, her nomination papers were wrongly rejected, it was argued. The Patna High Court held that her nomination papers were wrongly rejected and the election was quashed. Therefore, the elected candidate appealed to the Supreme Court.

**Ruling:** The Supreme Court dismissed the appeal. The Court got expert evidence from anthropologists on the tribal customs. It was shown that once the marriage of a Munda male with a non-Munda female was approved by the tribal Panchayat, they became members of the community. Therefore, the election was not valid. **(N.E. Horo Vs. Smt. Jahan Ara AIR 1973 SC 930)**

**11) Inter caste marriage- Father is a tribal and mother is non tribal-ST Community accepted- Offspring can claim the Status of Father-ST.**

A.P (S.Cs., S.Ts, & BCs) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), Sections 5 and 21 – Cancellation of Community Certificate by District Collector – Legality – 1<sup>st</sup> respondent produced social status certificate as belonging to Konda Kapu caste recognized as Scheduled Tribe (ST) – APPSC selected her for Group-I Services under S.T. quota – However, appointment order not issued to the selected post based upon verification report of Commissioner of Tribal Welfare that her social status certificate as ST is incorrect – She was selected to post of Deputy Registrar of Co-operative Societies – Denial of appointment challenged by respondent before Administrative Tribunal as arbitrary and

unjust – Tribunal directed State to issue appointment order to respondent – Government filed writ petition challenging order of Tribunal – Meanwhile District Collector cancelled the Community certificate of respondent – Respondent filed a writ petition challenging the said order of District Collector

Held: Primary reason for cancellation of respondent's community certificate as S.T by District Collector based on recommendation made by District Level Scrutiny Committee being inter-caste marriage of father of respondent who is a Tribal (ST) with a non-tribal, a women of yadava community and the assumption that the offspring is not entitled to claim the status of ST – The said assumption not correct – If a tribal man marries a non-tribal women (forward class), then the offshoots of such wedlock would attain the tribal status – Great grandfather and grandfather of respondent migrated from tribal area ( Araku Village, Visakhapatnam District) to Secunderabad and residing there from the time of their great grandfather's migration – Father of respondent born in tribal area and migrated to Secunderabad – They are undoubtedly belong to Konda Kapu Community (ST) – Respondent in her affidavit made specific averment that all her siblings, uncles and aunts have been accepted, on verification, as belonging to the said community – The said averment not contradicted by State – There is no reason to deny the said status to the respondent – Respondent entitled to claim the social status of Scheduled Tribe – Denial of appointment to the post selected by Public Service Commission on the alleged ground of not belonging to S.T – Arbitrary and unjustified – Order of Administrative Tribunal – Sustainable – W.P by Government dismissed – W.P. by respondent candidate allowed (**Agriculture and Co-operation (Co-op.II) Department, Hyderabad and another Vs. Pagadala Khali Kanthi and another 2010(3) ALT 663 (D.B)**)

**12) Social status of a child goes with social status of father**

**Section 5 and 21** – Community certificate – Cancellation of – On ground that though father of petitioner was a Konda Kapu, a Scheduled Tribe, he married a Kapu lady, a non tribal and, therefore, petitioner cannot be considered to be belonging to tribal community – Unjust – As held by Court in 2010 (2) ALD 333 (DB) and 1996 (2) ALD 33, Social status of a child goes with social status of father but not with that of mother – Petitioner, therefore, shall be considered to be belonging to Scheduled Tribe – [A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules 1997, Rules 7 and 8] (**Danala Appa Rao v. District Collector and District Magistrate, East Godavari, Kakinada and another, 2014(1) ALD 180**)

**13) A person by marrying a girl of another caste does not acquire caste of his wife-ST-Children acquire the caste of the father.**

I. Caste – caste is acquired by birth – person by merely marrying girl of another caste does not acquire the caste of his wife – Children born to them acquire the caste of the father but not the mother.

II. Social status – Petitioner claiming to belong to Yerukula tribe – The petitioner not able to speak Yerukula language – He obtained a caste certificate from Mandal Revenue Officer not having jurisdiction over the village to which the petitioner belongs – He produced only the certificate from another Mandal Revenue Officer – In the circumstances the respondents are justified in not upholding his claim for the petitioner. (**G. Sunil Kumar V. Regional Joint Director of Technical Education,**

**S.V. Government Polytechnic Campus, Tirupathi and another. 2001(1) ALD 385)**

**14) Community Status of father does not come to children automatically**

**Section 5-** Community Certificate – Cancellation of, justification – Father of petitioner admittedly belong to Adi Andhra, a Scheduled Caste – Cancellation of Community Certificate treating petitioner as belonging to Forwards Caste on ground that she was brought up by her mother, who is Brahmin – Perverse – In absence of exceptional circumstances, petitioner continues to hold community of the father – Petitioner, therefore, is liable to be considered to be a Hindu Adi Andhra belonging to Scheduled Caste – Writ petition allowed – Finding of District Level Scrutiny Committee (DLSC) and consequent impugned order of District Collector cancelling Caste Certificate of petitioner set aside as being perverse.

Contention:

Petitioner does not take community of her father automatically and that as she lived with her Brahmin mother when her parents became estranged, she cannot claim that she is a Hindu belonging to Adi Andhra Community.

Held\_\_\_\_

In (2012) 3 SCC 400, the mother belonged to Scheduled Tribe while the father belonged to a Forward Caste. The Supreme Court referred to the general rule that a child takes the community of the father and carved out an exception that in the overall circumstances of the case, a child may nevertheless be considered to take the community of the mother belonging to Scheduled Tribe. In the present case, there is no dispute that Alfred, father of the petitioner, Belonged to Scheduled Caste. Indeed, his brother is a Christian. When natural brothers themselves could belong to separate

religions altogether, it is unjust to consider the petitioner to be belonging to a Forward Caste on the basis of the community of the mother where admittedly the father belonged to Scheduled Caste. In this Court's considered view; the child takes the community of the father unless the exceptions are established. Merely because the petitioner was brought up by the Brahmin mother, the petitioner does not take the community of the mother. She continues to hold the community of the father.

The petitioner is the daughter of Alfred, a Hindu belonging to Adi Andhra. Indeed, the petitioner was brought up by her mother, Sundari, who is a Brahmin. However, no exceptional circumstances are carved out to consider that the petitioner takes the community of her father. The petitioner therefore is liable to be considered to be a Hindu Adi Andhra belonging to Scheduled Caste. (**K. Jhansi Rani v. District Collector and District Magistrate, Chittoor and others, 2014(2) ALD 222**)

**15) A woman after her marriage acquires caste and gotra of her husband- No evidence that she suffered any disadvantage or stigma or disability attached to a ST woman-**

Matrimonial Laws - Status of man after marriage – A woman, after her marriage, acquires caste and gotra of her husband – A.P (SC, ST and BCs) Regulation of issuance of Community Certificates Act 1993, Section 6.

Administrative Law– Speaking order - Order of appellate authority – nor setting out reasons in detail – Per se no ground for interference with – Appellant authority when agrees with view of primary authority, need not restate evidence or reiterate reasons given by primary authority – Any expression of general agreement with reasons given by primary authority in its decision under appeal would ordinarily suffice – A.P

(Scheduled Castes, Scheduled Tribes, and Backward Classes)  
Regulation of Issuance of Community Certificates Act 1993,  
Section 6.

A.P (Scheduled Castes, Scheduled Tribes, and Backward Classes) Regulation of Issuance of Community Certificates Act 1993 – Section 6 – Caste Certificate - Burden of proof lies on claimant to prove that he/she belongs to Caste to which he/she claims to belong – Petitioner not coming with different versions has no bona fids – One who has not come to Court with clean hands, not entitled to any relief – In affidavit filed in support of writ petition, petitioner claims to belong to Konda Dora Community and not Mannedore Community – When petitioner herself claims to belong to Konda Dora Community and did not explain why how she had sought Caste Certificate that she belongs to Konda Dora Community, it cannot be held that either District Level Scrutiny Committee or District Collector erred in holding that petitioner does not belong to Mannedora Community - Petitioner’s husband belong to Telaga Castes, which is not admittedly SC/ST/BC, so petitioner by virtue of her marriage with a person of Telaga Case, must be held to belong to Telaga Caste – (A.P (SC,ST and BCs) Issuance of Community, Nativity and Date of Birth Certificate Rules 1997, Rule 6) **(A. Nagamani V. Government of Andhra Pradesh and others 2008 (4) ALD 352)**

**16) Test to claim the ST status of off springs born out of wedlock between Tribal woman and non Tribal man.**

A. Constitution of India — Arts 342, 16 and 13 — Scheduled Tribe (ST) — Grant of Tribe certificate — Claim in respect of made by offshoot of wedlock between a tribal woman and a non tribal man — Maintainability — Held, condition precedent for granting tribe certificate is that one must suffer disabilities



wherefrom one belongs — Hence, offshoot of the aforesaid wedlock cannot claim status of ST — However, offshoots of wedlock between a tribal man and a non-tribal woman would attain the tribal status — Circular issued by Govt. holding that children born out of marriage between a Scheduled Tribe woman and non - Scheduled Tribe man would be treated as members of ST community if the marriage is accepted by the community and children are treated as members of their own community, held, was of no assistance in the face of the constitutional provisions as well as on the facts of the case, namely, that the parents underwent a court marriage, petitioner was brought up in the city in the environment of forward community — Casual visit to village, held, did not amount to acceptance by the tribal community — Cordial relationship with tribal community not enough — Scheduled Castes and Tribes - Constitution (Scheduled Tribes) Order, 1950 — Scheduled Castes and Tribes - Caste Certificate.

B. Constitution of India — Arts 342, 16 and 13 - Scheduled Tribe — Acquisition of status of — Claim in respect of, based on circular issued by Govt. in relation thereto — Maintainability - Held, such circulars not law within the meaning of Art 13 — Hence, could be of no assistance to the appellant in the face of the constitutional provisions - Administrative Law - Subordinate / Delegated Legislation - Circular - Status of - Held, is not law - Also cannot operate if contrary to constitutional provisions - Administrative Law — Ultra vires - Circular contrary to constitutional provisions — Can be of assistance - Scheduled Castes and Tribes - Status as a Scheduled Tribe.

C. Constitution of India – Arts, 341, 342, 15(4), 16(4) and 16(4-A) – Object of, restated –

The sole question involved in the present appeal was whether the offshoot of the wedlock between a tribal woman and a non-tribal man could claim status of Scheduled Tribe and get the Scheduled Tribe certificate.

The appellant was the offshoot of the wedlock between L and K. Husband L belonged to a Forward Class whereas wife K belonged to a Scheduled Tribe. By an order dated 7-8-1992 a Scheduled Tribe certificate was issued to the appellant by SDM on the ground that the mother of the appellant belonged to Oraon Tribe which was recognized as a Scheduled Tribe in the State concerned. The appellant appeared for the Civil Service Examination conducted by the Union Public Service Commission claiming himself to be a Scheduled Tribe candidate. He was finally selected in the said examination. He was also allotted Indian Information Service Grade-A. However, the appellant did not receive any final posting order, which resulted in filing of many representations to the Union of India.

Dismissing the appeal with costs, the Supreme Court.

**Held:**

The appellant is not entitled to get the Scheduled Tribe certificate. (Para 16)The condition precedent for granting tribe certificate is that one must suffer disabilities wherefrom one belongs. the offshoots of the wedlock of a tribal women married to a non tribal husband - Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being that such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any

disability. However, the situation will be different in a case where a tribal man marries a non tribal women. In that case the offshoots of such wedlock would obviously attain the tribal status. (Paras 14 and 6) (**Anjankumar Vs Union of India (2006) 3 Supreme Court Cases 257**)

**17) Offspring born to non tribals cannot claim status as ST on a claim that she was brought up b a tribal.**

This is a dispute over the status of a girl who claimed that she belonged to a scheduled tribe. The Andhra Pradesh high court directed enquiry into the matter and found that she was not a tribal, though she was brought up by a tribal.

**Facts:** The girl claimed that she belonged to a tribal community, as she was born during the association of her mother with Sriramulu, who is a tribal. The court directed an enquiry and it received a report. The mother of the girl gave a statement that she was deserted by her legally wedded husband along with the girl and she came and stayed with Sriramulu. The statement of the mother further showed that at the time when she was discarded by her husband, the girl was about three months old.

**Ruling:** On the facts of the case, the high court ruled that when the girl was born during the wedlock with a non-tribal, it could not be said that the girl could be treated as a tribal. The mother's statement before a competent officer must be believed and not that of the father.

The girl's counsel raised a further argument that after the mother was discarded by her husband; the girl was brought up by the tribal. Therefore, she must be given the status of the tribal. The court rejected her argument.

The judge stated: 'I am unable to agree with this contention. In determining the status of the parties, the status of the parents alone has to be taken into consideration, but not the status of the foster parents.' The writ petition was, therefore, dismissed.

Another important case regarding the claim of tribe came up in the Supreme Court in Ramavatar Vs State of Bihar (JT 1997(5) SC45). The petitioner claimed promotion on the basis that he was a tribal. The court asked him to produce his genealogy. After examining it the court rejected his claim, observing that it was "highly doubtful and beyond comprehension." (**Vajrakalaya Ramani Vs. Sub-Collector AIR 1990 AP 271**)

**18) Persons born of tribal father and non tribal mother- Guidelines -**

Orissa caste certificate (for S.C and S.T) Rules 198-, R1 – Person born of Tribal father and non tribal mother – whether belongs to Scheduled Tribe – determination. Factors to be considered, stated – case remitted back for fresh determination according to guidelines laid down by Supreme Court in Kumari Madhuri Patil Vs Additional Commissioner Tribal Development (AIR 1995 SC 94). (**Ismile Guru Vs State of Orissa AIR 1995 Orissa 267**)

**19) Claimant never claimed the Status of ST- but made claim on the basis of MRO for MBBS seat- Not permitted.**

Section 10, 13 and 14 – Petitioner, a daughter alleged to have been born to a Forward Class father and a Scheduled caste mother claiming a seat in Medical College Mandal Revenue Officer on the ground that she belongs to Scheduled Caste – She never claimed on the basis of her caste at any time in her whole academic carrier or even in the application or admission

to Medical College – Only when she did not get the required rank in EAMCET, she made a claim on the basis of her Caste – Mandal Revenue Officer also issued a certificate in a hasty manner without following the procedure prescribed by Supreme Court – Held, claim of the petitioner cannot be entertained – No direction can be issued to the respondents to consider her case for admission on the basis that she belongs to Scheduled Caste – **(A. Prathyusha Vs. Registrar, NTR University of Health Sciences and another, 2000(1) ALD 639)**

**20) ST status of family members accepted- Denial of same to other family member not justified.**

A.P. (S.C, S.T. and B.C ) Regulation of issue of community certificate act 1993 – Sections 5 and 21 – Community certificate – Cancellation of, on ground of inter caste marriage of father of respondent, a tribal with a woman from Yadava community, a non tribal and on assumption that offspring, not entitled to claim such of respondent had married outside his caste, respondent, as offspring, entitled to claim same status – Further, social status claimed by respondent being interlinked with status of her grandfather, father, siblings of father and brother of respondent, when their social status as belonging to schedule tribe community has been accepted and continued, denial of same so far as respondent is concerned, is highly unjustified and arbitrary – (A.P.(S.C. S.T. and B.C) issue of Community, Nativity and date of Birth Certificates Rules 1997, Rules 8,9 and 21) Para 12-14 **(Government of Andhra Pradesh and another Vs. Pagadala Khali Kanthi and another) (2010 (2) ALD 333 (DB)**

**21) Change of Religion does not affect the Social Status**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities ) Act, 1989 – Section 3(1)(xi) – Complaint that a woman belonging to Scheduled Tribe has been outraged by the accused – Plea of the accused that the parents of the victim have long back embraced Christianity – Merely by change of religion a person does not cease to be a member of Scheduled Tribe – It depends upon the fact whether the said person is still suffering from social disability and also following customs and traditions of the community to which he earlier belonged – case remanded back to Trial Court. **(State of Kerala and another V. Chandramanan. 2004 (1) ALD (CrI.) 623 (SC)**

**CHAPTER - V**  
**CLAIMS BASED ON INTER STATE MIGRATION AND**  
**ITS VALIDITY**

**1) The castes specified in one State cannot be treated same as in other States.**

The Supreme Court considered the question whether the certificates of candidates belonging to backward classes in states other than Delhi could hold good for the purpose of recruitment to posts of primary and nursery teachers in the Municipal Corporation of Delhi. A related issue is whether the "Other Backward Classes" (OBC) of states other than Delhi can be treated as OBCs in Delhi and can extended the benefits given to OBC in Delhi. The answer given by the court was that the OBCs of other states could not be treated as OBCs in Delhi. They could be treated only in the general category. In this case, applications were invited from Indian citizens for the posts of primary and nursery teachers in municipal schools. Some candidates applied for the posts in the OBC category with certificates issued to them from other states. These applications were rejected. They moved the Delhi high court, which allowed their writ petitions and directed the authorities to consider them on the basis of the certificates from other states.

The Supreme Court set aside these findings. It said: "Castes or groups are specific in relation to a given state or Union Territory, which obviously means that such caste, would include caste belonging to an OBC group in relation to that state or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would

depend on the nature and extend of disadvantages and social hardships suffered by that caste or group in that state. However, it may not be so in another state to which a person belongs thereto the same nomenclature is specified in two states but the considerations on the basis of which they have been specified may be totally different. So the degree of disadvantage of various entirely different. Thus, merely because a given caste is specified in one state as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other states and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. **(Municipal Corporation, Delhi Vs Veena AIR 2001 SC 2749)**

**2) ST notified in Maharashtra cannot claim same social Status in A.P**

Constitution of India – article 342(1) – Petitioner who is a member of the Scheduled Tribe as determined by the President of India in respect of Maharashtra State cannot claim the same social statuses, when the said tribe is not included in the list of Scheduled Tribes in respect of State of Andhra Pradesh. **(Chilwar Sarojini Devi V. Government of A.P and others. 2003 (6) ALD 716)**

**3) Presidential notification of ST in one State is not valid in another state.**

This judgement of the Andhra Pradesh High Court makes it clear that the President's declaration of a SC/ST within one state is not valid in another state. Each state has its own list of SC/ST. There is no all-India List.



**Facts:** - There are two cases. In the first one, a family belonging to former East Bengal migrated to West Bengal during the Partition, and then to Andhra Pradesh, where the head of the family found a job. They belonged to 'Namasudra', an untouchable caste. There are few Namasudras in AP. They are not notified as a SC by the President under Article 341 of the constitution in relation to AP. When the son in the family sought admission in a professional college, it was denied as his caste was not in the notified list for AP. Therefore, the denial as his caste was not in the notified list for AP. Therefore, the denial of seat was challenged. The second case was almost identical except that the candidate belonged to a ST notified by the President in relation to Bihar. The family was settled in AP, and the son wanted a seat in a medical college. But AP did not recognize his 'Khari' tribe. So he moved the high court.

**Ruling:** - The High Court rejected both their petitions with detailed reasons. It said that the Constitution recognized only state lists for SC/ST. The President declares the lists under Articles 341 and 342, but he does it only "after consultation with the Governor" and "in relation to that state". The President cannot notify an All India SC/ST list. Therefore, a SC/ST declared as such in one state need not necessarily be treated so in another state.

The states cannot prepare their own lists. Therefore, children of central government servants belonging to SC/ST will not be able to claim benefits of Article 15(4), which are open to them in the parent state, in the states to which they are transferred unless the Presidential notification notified them as SC/ST in the new state.

The court rejected the argument that this interpretation would offend a citizen's fundamental rights to move freely throughout the country guaranteed under Article 19(1) (C). Article 21 also would not be violated. Their right to movement, or their right to life and personal liberty, has not been curtailed in any way. The real question was the one relating to their constitutional status which can be enjoyed only by and under a Presidential notification. The court recognized the hardships of those who chose to leave their home state and work in another state. Their dilemma is to stay in the home state and enjoy the benefit or "to renounce those props and stand on one's own legs and fight the battle of life from an unequal position moving throughout the country". (**Tapan Kumar Roy Vs. Convener AIR 1989 AP 132**)

**4) ST list in one State is valid only within that State.**

This judgement of the Orissa High Court emphasizes that the SC/ST list in one state is valid only within that state. Those in other states cannot claim the benefit even if they are in central government services.

**Facts:** The petitioner was a resident of Orissa belonging to Konda Kapu (ST). He was promoted on the basis that he belonged to ST. Later he was reverted on the ground that Konda Kapu was not recognized as ST in Orissa where he was a permanent resident. He challenged his reversion in a writ petition. He argued that Konda Kapu was recognized as ST in Andhra Pradesh under the Constitution (ST) Order 1950. Since he belonged to the central services he must be considered as ST he must be considered as ST wherever he was residing or posted. It was pointed out that Section 2 of the Public Employment (Requirement as to residence) Act provided that all requirements as to residence in a state or Union Territory

shall all cease to have any effect. Therefore, residence in a particular areas or state would not be a bar to public employment under the central government and the state wise classification for employment should not be recognized. Therefore, it was enough to show that he belonged to SC/ST, and not to a particular state.

**Ruling:** The Orissa High Court dismissed the contention, basing its reasoning on Articles 341(1) and 342(1) of the Constitution. These Articles state that the President shall notify the list of SC/ST “in relation to that state.” These words are not without significance. It showed that in order to get the benefit of being a member of the SC/ST in the matter of public employment, the person should be a member of such caste or tribe in relation to the particular area or state where he was residing and where he sought employment. The Public Employment Act could not override the provisions of the Constitution. The Constitution (ST) Order 1950 provides that the tribes specified in Part I to XII of the schedule to that order shall “in relation to that state” to which those parts respectively relate, be deemed to be the ST, so far as regards members residing there. It is therefore clear that the particular ST re recognized only for that particular area. This view is reinforced by the Supreme Court judgement in AIR 1965 SC 1557. Educational and social backwardness in regard to castes and tribes may not be uniform or of the same intensity in the whole state; it may vary in degree or kind in different areas and that may justify the division of the state into convenient and suitable areas for issuing the notification. In the present case, Konda Kappu is mentioned in the 1950 Order in relation to AP, but not Orissa. The petitioner while residing on Orissa, cannot, therefore claim the benefit of reservation, the court said. (**K. Apparao Vs. Director of P & T, AIR 1969 Orissa 220**)

**5) Issuing Certificate in AP based on certificate issued in Karnataka not valid.**

A.P (SC, ST and BC) Regulation of Issue of Community Certificate Act, 1993 – Sections 2 (a), 2(c) and 4 – Caste Certificate – Competent authority – Petitioner obtained certificates from Tahsildar of Arsikere as well as Bangalore which clinchingly show that he belongs to Yadava Caste of Karnataka State- Mandal Revenue Officer, Tirupathi (Urban) issued Community Certificate which shows that he belongs to Yadava Caste, which is mentioned at Serial No. 33 under BC-D Category – Petitioner sought admission in one of seats reserved for BC-D Category in EAMECT-2004 – 1<sup>st</sup> respondent rejected application on ground that petitioner being a migrant child from other State, he is not eligible for reservation under B.C of Andhra Pradesh - Petitioner filed writ petition seeking direction to respondents to consider his case as local candidate belonging to BC-D Category for second phase of counselling for admission into M.B.B.S/B.D.S. Course for the year 2004-2005 – Held, that it was improper for M.R.O. Tirupathi to issue Community Certificate dated 28-6-2003 and based on said certificate which is illegal and without authority, petitioner cannot claim any benefit – In view of Government Memo. 30870/JI/90-2 dated 9-5-1991. 1<sup>st</sup> respondent was justified in rejecting claim of petitioner for admission under B.C-D category – Writ petition dismissed. **(D. Balamurali V. NTR University of Health Sciences, Vijayawada, Krishna District and another 2004(6) ALD 291)**

**6) The Person belonged to caste specified in one State cannot seek same benefit in other State.**

Despite the earlier judgement in Marri Chandra Rao case, the issue was raised again in 1994 and another constitution bench

reiterated that the migrant SC/ST could not claim benefits in the new state.

**Facts:** This was a public interest petition by the “Action Committee on the issue of Caste Certificate to SC/ST in the State of Maharashtra”. Their grievance was that Maharashtra has denied the benefits available to SC/ST specified in relation to the state to those from outside the state. The denial was violative of Articles 14, 15(1), 16(2) and 19 of the Constitution. Those belonging to SC/ST, wherever they are, are economically backward, it was argued. They had to leave a state to escape indignities and atrocities and to search for livelihood. Earlier there was no discrimination in different states but the situation changed drastically after the central government issued a communication to all state governments on March 22, 1977. This was further confirmed in late communications. There were challenged in the petition.

**Ruling:** The Constitution bench dismissed the arguments and approved of the ruling in the Marri Chandra case. Further, it explained –

“We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of SC/ST or backward classes in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that state which may not exist in another state to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two states but the considerations on basis of which they have been specified may be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature

in another state the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter state 'for the purposes of this Constitution'. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution." (**Action Committee, Maharashtra Vs. Union of India AIR 1994 (5) SCC 244**)

7) **Imposing restriction on Claiming ST status against the Presidential Order- Not valid.**

This judgement of the Bombay high court deals with the status of a tribal migrating from one state to another. Can one state put a restriction saying that only those who had migrated before a particular date would be recognized as ST? The high court says such curbs are unconstitutional.

**Facts:** Rajesh belonged to the Bhil tribe, who are spread in several north Indian states. His parents migrated from Gujarat to Bombay in 1961 and settled down with a job and own flat. Rajesh was brought up in BOMBAY. The problem arose when he sought medical admission on the basis of his tribal status for the reserved seat. He claimed that Bhils were recognized as ST in both Gujarat and Maharashtra. But a seat was refused in view of a Maharashtra Government resolution under which there was a distinction made between persons migrating to Maharashtra prior to 6.9.1950 and after that. Under that instruction, the boy was eligible for the benefit only in Gujarat, and not in Maharashtra. Therefore, the validity of the instruction was challenged through a writ petition.

**Ruling:** The high court allowed the petition and declared that Rajesh was of Maharashtra domicile, whether reckoned by

his upbringing or that of his father's history. The government was asked to process his application for medical admission. The government instruction was struck down as violative of Articles 342, 14 to 16 and 19 of the Constitution. Excerpts from the judgement:

The founding fathers being aware of the disabilities, from which certain sections of people suffered, took care to incorporate in the Constitution provisions designed to provide compensatory discrimination in favour of these sections. Groups to be recognized as such tribes have to figure in a notification which the President issued in consultation with the Governor. Parliament can by law amend this notification whether by inclusion or exclusion of any group. Barring this method, the presidential notification could not be varied-not even by such a subsequent notification.

The power to include or exclude from the enumeration of ST under the Presidential order in 1050 vests only in Parliament. This power cannot be encroached upon by the state government in the guise of administrative instructions. The power to enumerate ST vested in the President and the notification containing such enumeration can be amended only by Parliament. The state government cannot give their own construction to the list of ST entitled to reservation.

The government resolution in this case creates an artificial distinction between migrants prior to 6.9.1950 and those subsequent to that date. Why the cut-off date should be 6.9.1950 is incomprehensible. According to government counsel, it is to preserve the rights of the really needy instead of the well-placed migrants. This argument constitutes a refutation of the right to move freely, reside and settle anywhere and practice any profession under Article 19.

Nothing more pernicious of the equality promise in Article 14 and the freedoms incorporated in Article 19 can be conceived of. Further, Article 15 and 16 permit compensatory discrimination for classes like ST. They do not warrant denial of facilities to those entitled to reservation on the entirely fortuitous timing of their parents' entry into Maharashtra irrespective of the factors that go into the fashioning of domicile. (**Rajesh Patel Vs. State of Maharashtra AIR 1990 Bombay 114**)

**8) ST benefit in the case of Migration to other States- Different view of Court.**

This case highlights the difference in views possible among the High Courts over the SC/ST status of a person who migrates to another state in the course of his/her job.

**Facts:** The petitioner belonged to the central telegraph department. He was earlier posted in Maharashtra, where his caste Halba is recognized as ST. His daughter had got admission in medical college in a reserved seat on account of the tribal certificate. Later he was transferred to Gujarat. When his son sought admission to a local engineering college, it was denied on the ground that Halba was not a ST in Gujarat though in Maharashtra it was so. Therefore, he challenged the decision and the guidelines which denied reservation to the student. It was discriminatory and violated the freedom of movement guaranteed in the Constitution, it was argued. The Gujarat government said that the recognition of the Halba tribe was valid only in Maharashtra and not in Gujarat according to its interpretation of Articles 341 and 342 of the Constitution.

**Ruling:** The Gujarat high court allowed the writ petition and directed the college to admit the student as belonging to ST



community. However, some high courts have dissented from this view of the matter.

The High court stated that the words occurring in Articles 341 and 342 'from the purposes of this Constitution' should govern the subsequent phrase 'in relation to that state or Union Territory' and not vice versa.

If the arguments of the college was accepted some unconstitutional conclusions would follow, like: - While protection under Article 15(4) is granted, their freedom of movement and right to reside anywhere in the country guaranteed under Article 19(1)(d) and (e) would be infringed. The protection would be available only if one surrendered the freedom of movement. This would frustrate social justice, the very purpose of protective discrimination. It would lead to a member of SC/ST breathing different "constitutional and legal air" in different parts of the country.

There is nothing in the Constitution to indicate that SC/ST would get benefits only if they reside in a particular geographical area. The guidelines would be unworkable in the case of national institutions like the All-India Institute of Medical Sciences (Delhi) or Indian Institute of Management (Ahmadabad). Many regional SC/ST would not be found in the list of Delhi Union Territory. The high court thus allowed the petition. It noted that the Orissa high court had given a contrary decision (AIR 1969 Orissa 220). (**Ghanshyam Vs. L. D. Engineering College AIR 1987 Gujarat 83**).

**9) A person cannot claim benefits in the original State after migrating to new State- Supreme Court Judgment- Overruling the earlier High Court Judgments.**

Where a person belonging to a caste or tribe in one state migrates to another state, can claim the benefits under the

Constitution in the new state? This question was rising again and again in the high courts. There courts were giving different rulings on this issue. Therefore, the question was decided by the Supreme Court in this judgement, decided by the constitution bench. The Supreme Court denied the benefit to the migrants. The present Supreme Court ruling has overruled all High Court decisions taking the opposite view. Those who want to read the conflicting High Court rulings may refer to AIR 1969 Orissa 220, AIR 1989 Bombay 138, ILR 1976 P&H 769.

**Facts:** - Marri Chandra was born in Andhra Pradesh and belonged to Gonda (ST) community. His father got a job in a Government of India undertaking on the basis of ST certificate and was posted in Bombay. Marri was then nine years old. He studied in Bombay After his school studies; he sought admission to a medical college in the ST quota, which was denied. ST candidates with less mark were admitted in the reserved seats as they belonged to Maharashtra. This was based on the state government decision that only those SC/ST members who were resident of the state before 1950 would be eligible for the quota. This was challenged by the student.

**Ruling:** - A five-judge Constitution bench of the Supreme Court rejected the contention that the new state should also recognize the SC/ST certificate and grant benefits according to it. He was denied admission to the medical college. The court interpreted Articles 14, 15, 16, 341 and 342 of the Constitution to arrive at this conclusion. The benefits are given to SC/ST in one state to compensate for the denial of opportunities in the past. At the same time, the Presidential Order specifying SC/St in one state must be taken as “in relation to that state”. Any of those SC/ST persons who go to

other states should ensure that they make way for the disadvantaged in those areas. “In other words, Scheduled Castes and Scheduled Tribes, say of Andhra Pradesh, do require necessary protection as balanced between other communities. But equally the Scheduled castes and Scheduled Tribes say of Maharashtra in the instant case do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem,” the judgement said.

Determination of caste continues to be a frequent problem in individual cases. In *Union of India Vs. Dudh Nath Prasad* (AIR 2000 SC 525), an IAS officer was about to lose his post, when the Supreme Court dismissed the appeal of the government against him. He was appointed a reserved vacancy as he was treated to belong to ‘Nuniya’ community which was declared to be a Scheduled Caste community in West Bengal but not in Bihar where he was born and educated. After discussing the concept of ‘domicile’ in detail, the court concluded:

“Notwithstanding that the parents of the respondent lived at one time in a village in District Siwan in the State of Bihar and that they owned some property also there, they had shifted to the State of West Bengal long ago and have been living there since then. For all intents and purposes, therefore, they shall be treated to be ‘originally residing’ in the State of West Bengal. For the State of West Bengal, the President, in exercise

of his powers under Article 341 (1) read with Article 366(24) had already declared 'Nuniya' Caste as a Scheduled Caste and, therefore, the respondent was rightly treated to be a Scheduled Caste candidate and was rightly appointed against a reserved vacancy, after being declared successful at the examination held by the UPSE."

The judgement of the Kerala High Court in *K.S. Vijayalakshmi Vs. Tahsiildar* (AIR 2000 Kerala 262) was a case of a family getting benefits on a forged certificate. A person in Tamil Nadu migrated to Kerala and got a job in the customs department on the strength of a certificate issued in Tamil Nadu that he belonged to a Scheduled Tribe. His children also got reserved seats in educational institutions and employment on the basis of the certificate. Doubts arose whether they were tribals. It was found that the father had given his community as 'Naidu', a non-tribal one, in the school certificate before the Constitution. Further enquiries also strengthened suspicions of forgery. The issue was taken to the court. Their writ petitions were dismissed by the high court. It held that the family could not perpetuate the benefits of their fraud. But the court left it to the authorities to determine the action to be taken against them. It ruled that entries in school registers could not be considered as conclusive evidence to prove caste/tribe. Further it said that a person could not claim the benefit which he enjoyed in the original state after migrating to a new State. (**Marri Chandra Rao Vs. Dean, Medical College 1990 (3) SCC 130**)

**10) Community certificate issued in one State is not acceptable in another State.**

The Kerala high court, ruled that the benefit of a SC/ST community certificate issued in one state would not be acceptable in another state. In this case, the girl belonged to Hindu 'Paraya' community in Tamil Nadu, which is recognized

as a SC as per the Supreme Court/ST Orders (Amendment) Act, 1976. Her father was employed in Kerala and therefore she studied in that state. After school, when she applied for professional courses, she invoked her caste for the reserved seats. The authorities pointing out the Union Home Ministry Circular of June, 7, 1985 rejected her claim. This circular clarified the status of immigrants before 1950. The Presidential Order on Castes in 1950 dealt with castes in each state. According to it, though she belonged to A SC in Tamil Nadu, she could not be treated so in Kerala. This view was accepted by the high court, citing Supreme Court judgements. Her writ petition was dismissed. (**Kumari Punitha V Commissioner of Entrance Exams AIR 2003 Ker 158**)

**11) Ordinarily resident of that State can seek benefit of Reservation.**

All India Services Act (61 of 1951), S. 3 – Constitution of India, Art. 16 (4) – Reservation for Scheduled Castes/ Scheduled Tribes – Availability – Ordinarily resident in State, which has notified caste as Scheduled Caste – What constitutes – Candidate for I.A.S examination belonging to Nuniya Caste – Born and educated in Bihar – Nuniya caste notified as Scheduled Caste in West Bengal – Parents of candidate residing in West Bengal for 30 years prior to examination – Candidate held belongs to Nuniya caste of West Bengal – Entitled to benefit reservation.

Representation of the People Act (43 of 1950), S. 20. Words and Phrases – Reside and Residence – Meaning.

Private International Law – Domicile – Concept of – Cannot be used or determining ordinary residence. (**Union of India and others Vs. Dudh Nath Prasad AIR 2000 SC 525**).

**CHAPTER - VI**  
**ADOPTIONS**

**1. Adoption is not genuine:**

This is a case where a Brahmin Girl was “adopted” by a person of a backward class, before applying for a medical seat in the reserved quota. The Andhra Pradesh High Court found that the adoption was not genuine.

**Facts:** The petitioner was a Brahmin Girl, brought up and educated by her natural father, an advocate. In her earlier examinations, she had not claimed that she belonged to the backward shepherd caste. But after obtaining her marks at the medical entrance examination, she made this claim with the support of the certificate of the village munsiff. According to her, she was adopted by a low caste man and therefore she could claim a seat in the backward classes’ quota. This was doubted by the authorities and thus she moved the High Court.

**Ruling:** The High Court dismissed her petition. It stated that though she appeared to have been adopted by the shepherds, which was prima facie proved by the registered documents, the adoption was a motivated one. She did not assimilate herself in the backward class no. did she suffer any of its handicaps or ignominy. Therefore, she was not entitled to the benefits under Article 15(4).

The High Court stressed that caste alone was not a determining factor in finding whether a class of citizens was backward. It is one of the considerations. If a person did not belong to a homogeneous group with common attributes like status, rank, occupation, race and residence, the court should examine that person’s status. It must see whether the person was trying to

acquire the status by the process of law. If a Brahmin child was adopted at a tender age by a low caste person and brought up under lowly surroundings it could plead backwardness. But if a Brahmin child was adopted at a fairly advanced stage like 15 years, after enjoying the advantages of the higher caste, it could not claim to belong to the homogeneous backward class.

The High Court distinguished adoption under the Hindu Personal law from one for the purpose of the Constitution. In order to get benefits under Articles 14, 15 (4) and 16 (4), the child must integrate with the low caste community, suffering all its handicaps. Therefore, registration under the Hindu Adoptions and Maintenance Act was of no avail in the present case, the Court ruled (**A.S. Sailaja Vs. Principal, Kurnool Medical College, AIR 1986 A.P 209**)

**2) Adoption is not allowed to claim ST status**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ order or direction more in the nature of mandamus declaring the action of the respondents in declaring that the petitioner is not eligible for admission to B.E/B. Tech, of Osmania University as Scheduled Tribe candidate having upon the opinion expressed by the Second respondent intimated by the 1<sup>st</sup> respondent to the petitioner in his No. B. E/B. Tech., Admission / 85/115 Dt.7-10-85 as illegal and void and consequently to direct the respondent to direct admission of the petitioner into 1st year B. E/B. Tech, course for the year 1985-86 in the scheduled tribe quota.

***The Court made the following order:-***

The petitioner is seeking Mandamus to declare that the action of the respondent declaring that the petitioner is ineligible for admission into B. E. / B. Tech. of Osmania University as a Scheduled Tribe candidate as illegal, void and unconstitutional and to direct the first respondent to admit him into the First Year B.E./B. Tech. Course for the year 1985-86 from the Scheduled Tribe quota.

The case of the petitioner is that though he was born in Golla (Shepherd) community, he was adopted by Smt. Kotha Muthulingamma, a resident of Buddharam village of Garla Revenue Mandal in Khammam District, who belongs to Naikapu community, which is a Scheduled Tribe. The adoptive mother is childless. Therefore, from this childhood he was fostered as her adopted son and was received by all the members of Naikapu community of Buddharam village. The Mandal Revenue Officer, Garla, issued a certificate dated July 15, 1985 that he is a Scheduled Tribe. He applied for admission into the First year B.E. / B.Tech. Course for the academic year 1985-86 as a Scheduled Tribe candidate.

He appeared for the common entrance test with hall ticket No. 40388 and he secured rank No. 11025. He was required to appear on July 29, 1985 for interview. Accordingly when he appeared on that day he was directed to approach the Director, Tribal Welfare, the second respondent.

He accordingly appeared and produced before the second respondent all the records to establish that he is a Scheduled Tribe (Naikapu Community). After receipt thereof, he was asked to go away informing him that orders would be communicated, but no communication was received. On October 8, 1985, he got issued a registered notice to the Second respondent to clear his claim for admission as a Scheduled



Tribe. By Memo dated October 7, 1985, issued by the first respondent it is stated that the second respondent in his letter dated October 4, 1985 informed him that he is not a Scheduled Tribe and therefore he is not eligible for admission as a Scheduled Tribe candidate. Thus the petitioner contends that he having been adopted by his adoptive mother, Kotha Muthulingamma, a Scheduled Tribe (Naikapu Community), as of right, he is entitled to be treated as a Scheduled Tribe and the rejection of his claim is clearly unconstitutional, illegal and without authority of law.

A counter affidavit has been filed on behalf of the 2nd respondent, by the Deputy Director Mr. D. Ramachandra Raju. It is stated therein that the petitioner is the son of Bandi Veeraswamy of Kachirajugudem of Tirumalayapalem Mandal in Khammam District. He did not reside in Buddharam village. The certificate issued by the Mandal Revenue Officer, Garla dated July 15, 1985 does not disclose that the petitioner belongs to Scheduled Tribe through the adoption by Smt. K. Muthulingamma. The certificates viz., studentship certificates issued by the Government High School, Narayanaguda; Secondary School Certificate and bonafide Certificate form Chaitanya Kalasala; Conduct certificates issued by Dr. B.R. Ambedkar Junior College, Hyderabad and Chaitanya Kalasala, Hyderabad and pass certificates issued by the Board of Intermediate Education, establish that he is the son of Bandi Veeraswamy. In the questionnaire filed by the Petitioner on August 7, 1985, there is no mention that he was adopted by Kotha Muthulingamma of Buddharam Village. The electoral rolls reveal that the petitioner is the son of Veeraswamy and that he is a resident of Kachirajugudem. The investigation conducted by the second respondent revealed that the petitioner never lived in Buddharam village. All the relations of the

petitioner are only Gollas (Shepherd) by caste. The School records of the Government High School, Narayanaguda, where in the petitioner studied upto 10th class, does not disclose that the petitioner is a Scheduled Tribe. Even in the application for admission into Intermediate Course in Dr. Ambedkar College in August 1980, he claimed to belong to Backward Class (Golla) and his native place as Kachirajugudem. He obtained Backward Class Certificate from the Tahsildar, Khammam in L.Dis.No. B8/3982/80. In the year 1981-82 he joined Chaitanya Kalasala, as a Backward Class. The certificate issued by the Mandal Revenue Officer, Garla is a false certificate. The said officer issued a show cause notice dated August, 26, 1985 to cancel the certificate and after due enquiry and consideration, cancelled the same by order dated November 12, 1985. In the enquiry before the authorities, the petitioner did not mention the date, time and place at which the adoption is alleged to have taken place.

Mr. M.R.K. Choudary, learned counsel for the petitioner argued this case along with W. P. No. 9750 / 85. He contends that though the petitioner is a Golla (Shepherd) by birth, his adoption to a Tribal, Muthulingamma, is valid under customary law. He is entitled to all the benefits by operation of Section 12 of the Hindu Adoption and Maintenance Act, 1956, for short, "the Act" Article 15(4) of the constitution provides right to admission to the Scheduled Tribe citizens viz., to the community as a whole, but not to an individual. Therefore, the petitioner is entitled, as of right to all the benefits accrued to the Scheduled Tribes. His adoptive mother, Muthulingamma is a Naikapu community is not disputed. Though the adoption may have the effect of defeating the purpose of the constitution, when law permits such an adoption and it being valid, the President is to take recourse to appoint a commission under

Article 340 of the Constitution and seek redressal of amendment of the Act. Till that is done, the petitioner is entitled to be considered as a Scheduled Tribe. It is further contended that in law, the petitioner is treated as a Scheduled Tribe. The said right cannot be taken away by an executive action unless there is a law made in that regard. It is further contended that under the Admission Rules, with regard to adoption, there is no procedure provided for enquiry into the Social Status on the basis of adoption; Therefore, the enquiry conducted by the second respondent is without jurisdiction. The only recourse the respondents could take of is to file a suit seeking declaration that the petitioner is not a Scheduled Tribe. He places strong reliance on N.E. HORO Vs. JAHAN ARA”.<sup>1</sup>

As already stated, the matter was heard along with the writ petition of Kum. Sailaja (W.P.No.9750/85). But since there is a slight digression with regard to the area of consideration of the claims of the Scheduled Tribes, I felt it expedient to separately deal with this case.

Article 366 (25) of the Constitution defines “Scheduled Tribe” to mean, such tribe or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes “for the purposes of this constitution”. Article 342(1) empowers the president with respect to any State or Union territory and where it is a state, after consultation with the Governor thereof by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution to deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be. Article 342(2) empowers the parliament, by law, to

include in or exclude from the list of Scheduled Tribes specified in the public notification issued under Article 342(1)

In exercise of the power under Article 342(2) of the Constitution, the Parliament made the Scheduled Castes and Scheduled Tribes Lists (Modification) Act, 1956 which was subsequently Amended by Act 108 of 1976. Under Section 4 thereof, the Scheduled Tribes Order 1950 was amended in the manner and to the extent specified in the Second Schedule appended there to. In Part I thereof, Item No. 23 is "Nayaks" in the agency tract. The term "Nayaks" is now claimed colloquially to be called "Naikapus". But it is not disputed in the counter affidavit filed by the 2nd respondent. The power of the Court to consider whether a particular caste or tribe is to be recognised for the purposes of the Scheduled Castes and Scheduled Tribes Order was considered for the first time in *BASAVALINGAPPA Vs. MUNI CHINPPA*"<sup>2</sup>. In that case, Voddar caste was declared to be a Scheduled Caste in Mysore State. The unsuccessful candidate in the election viz., the appellant contended that the Voddar caste does not exist and therefore the respondent, being a Voddar, cannot contest as a Scheduled Caste.

Wanchoo. J, (as he then was) speaking for the Court held that it is not permissible for the court to go behind the public notification issued by the President and grant a declaration that a particular caste or subcaste or a group thereof is not a Scheduled Caste. The same view was taken in *BHAIYA LAL Vs HARIKISHAN SINGH*"<sup>3</sup>. In this case, Dhar caste was claimed to be the sub-caste of Chamar. Gajendragadkar, C.J. held for the court that it was impermissible for the court to go into that question. The public notification issued by the President is conclusive. It is an additional assurance to the scheduled castes. The same ratio was reiterated in a catena of

decisions subsequently. I have an occasion to consider this aspect in *P. Vijayalakshmi vs The Principal, Sri Venkateswara university college of engineering* (W.P.No. 14875/85) just now disposed of and I have also held therein that the public notification issued by the President under Art. 341(1) is conclusive subject to the amendment under Art. 341(2) by the Parliament and the Court cannot investigate into or vary the same. It was further held that no person who is not a member of the Scheduled Caste can claim to be declared to belong to Scheduled Caste nor the Court could grant such a declaration. The question regarding the Scheduled Tribes was considered by a Division Bench in *The principal, Guntur Medical College vs v. Pandurangarao*<sup>4</sup>. The question therein was whether Manyam Kapu was synonymous for Kondakapu. It was contended therein that the Court can enquire into whether a particular community is not one of the communities enumerated in the list appended to the constitution Scheduled Tribes Order, 1950 as subsequently amended. While considering that question, the Division Bench reviewed the entire case law and my learned brother, Kodandaramyya, J. held that once the list has been enumerated in the Scheduled Tribes (Amendment) Order, 1956, it has become final and it is not permissible to the Court to add to or subtract from the list of Tribes. In *Government of Andhra Pradesh, represented by The Secretary, Social Welfare Vs Smt. Dasari Subbayamma and another*<sup>5</sup> another Division Bench was called upon to consider whether the respondent Dasari Subbayamma, a Gowda by Caste (Backward Caste) becomes a member of the Scheduled Tribe (Goudu) under Article 342, by virtue of her residing in the agency tract. The respondent purchased immovable property situated in agency tract. By operation of Regulation 1 of 1959, the purchase made by her was declared to be void under section 3 thereof. It was contended that Goudu

is synonymous to Gowda and therefore she is a Scheduled Tribe since she has been residing the agency tract. The learned single judge upheld the contention and declared her to be a scheduled tribe. On appeal, my learned brother, Jeevan Reddy, J. speaking for the Bench surveyed the entire gamut of the controversy and by judgement dated April 9, 1985, held that a person belonging to a tribe is a matter of birth; not of choice, nor a matter of law. The Presidential Order does not support to do all this and there are no reasons to attribute such a meaning or intent to it. Indeed placing such a construction upon the Presidential Order would make it ultra vires the power of the President under Article 342. I respectfully agree with the ratio in these cases. My learned brother, Jeevan Reddy, J. further surveyed in the latter case the characteristics of the Tribes, customs and practices which mark of the tribes from the plain people. It was held thus:

“In this context, it is well to remember that the Hindu caste system has, fortunately, not percolated into these tribes or tribal communities. These tribes are entirely outside the caste-system, even distinct and apart from the Scheduled Castes...”

It is further held that if the loco-motion or domicile by a Backward Class with synonymous names in Agency tract is permitted to have its way it would be open to all or any of the members of that community all over the state to set up a small residence or purchase a small piece of land anywhere in the agency tract and then claim that they are also members of the Scheduled Tribes. Such a construction would be impermissible. Thus, on a review of the entire case law, it is not settled that the public notification issued by the President under Article 342(1) specifying particular tribes or tribal communities or parts of or groups within tribes or tribal

communities shall be conclusive and final subject to amendment made by the parliament under Article 342(2). It is not permissible for the court to go into and give a declaration whether a particular tribe or tribal community or group or part within such a tribe shall also be the Scheduled Tribe. When so much is the case, it is equally not permissible for the Court to give a declaration that a particular citizen shall also belongs to Scheduled Tribe, within the meaning of Article 342 of the Constitution. The question whether Naikapu are Nayakas in Agency tracts cannot be gone into. But in this case the respondent No.2 did not dispute the claim. So without deciding this question, I proceed on the footing that Muthulingamma is a Nayaka, a Scheduled Tribe - Item No. 23 of part I of Schedule II of the Scheduled Tribes Order, 1950 as amended in Act 108 of 1976.

The immediate question is whether the petitioner is eligible for admission as a Scheduled Tribe by virtue of his adoption by Scheduled Tribe woman? The contention of Sri M.R.K. Choudary, learned counsel for the petitioner, as already extracted, has been considered in extensor, in Kum. Sailaja's case (W.P.No.9750/85), just now disposed of. To avoid repetition and undue burden, the reasoning in Kum. Sailaja's case in this regard with equiforce, applies to the facts in this case. Another distinguishing feature is that Section 2(2) of the Act expressly excluded the applicability of the Act to the members of any Scheduled Tribes within the meaning of Article 366 (25) of the Constitution unless it so notified in an official gazette by the Central Government. Equally, even under Sec. 2(2) of the Hindu Marriage Act, 1955, and Sec. 2(2) of the Hindu Succession Act 1956, were also made inapplicable to the members of the Scheduled Tribes. In *DASARATH Vs. GURABEWA*, R. N. Misra. J. (as he then

was) held that the Hindu Succession Act does not apply to the Scheduled Tribes. We are not concerned in this case the scope of applicability of customary law. Hence the need to deal with it is redundant.

Prof. Marc Galanter in his “Competing Equalities - Law and the Backward Classes in India”, at page 152 states that:

“The provisions for Scheduled Tribes are distinct not only in their scope but in their intent, for preservation of their separate integrity, rather than complete assimilation is one element in policy towards them”.

At page 153, he states that:

“Special treatment of the Tribes will, it is hoped, foster development ‘along their own lines’. Because of this different in purpose (and because of their geographical separation), the objections that have been made against the use of communal criteria in other categories of backward classes have not been made with the same force in regard to the Scheduled Tribes ... Although the Scheduled Tribes share with Scheduled Castes a variety of reservations .... The principal schemes for the Tribes have been protective and developmental (economic, educational, health and communications). Tribal aspirants have not pressed hard on the reservations; many have gone unfilled.”

The effect of adoption on the Constitutional scheme envisaged under Article 15(4) was considered in extensively in Kum. SAILAJA’s case. There in it was held that while the Courts are obliged to accept a document or transaction found to be genuine as such, they are not to blinker at the language couched in the document or the transactions entered into. It is to ascertain the legal nature of the transaction; the sophisticated



legal devices adopted in the transaction and determine their true nature. The Court's duty is to pass through them undeterred to unravel the camouflage; consider the situation created by the devices with the aid of marching techniques of interpretation and discover the true state of affairs. In an adoption under the Act or under the customary law, when it is for the religious purpose, enquiry into motive is irrelevant. If it is for secular purpose, motive is a relevant circumstance. When the adoption is set up as a means or source to adventitious aid of Article 15(4), the paramount purpose of the constitution being to advance the educational and economic interest of the Backward Class of citizens or Scheduled Tribes or Scheduled Castes, to assimilate them in the main stream of the society surpassing the handicaps suffered by them due to Hindu social structure and caste system, the motive for such an adoption is absolutely a relevant factor and the court would pierce through the document and find the purpose for such an adoption. The doctrine of harmonious construction is to be adopted by the Court to interpret the provision and the effect thereof. Judiciary is an organ of the state within the meaning of Article 37 of the Constitution. Therefore, it is bound to enforce the provisions of the Constitution. When the actions or transactions though apparently assume the colour of legal form, but when tends to defeat the constitutional scheme, restrictive construction to sub serve the purpose of the Constitution is to be adopted. It is further held that the Court need not necessarily fold its armour of statutory construction and leave the effect for amendment by the Legislature after investigation under Article, 340. In the light of the above law, the question considered therein was whether the petitioner Kum. SAILAJA' (in that case) on adoption, becomes a member of the Backward Class. It was held that on adoption under the Act, the adopted child becomes a member of the adoptive

family for a religious or secular purpose, but for purposes of the Constitution, the adopted child must satisfy not only that he/she belongs to the particular homogeneous group of class and thereby became a members of the homogeneous group but also had suffered or subjected to all the disadvantages or handicaps which the members of the homogeneous group are subjected to or have undergone or is undergoing. Recognition of such a person by the caste is to be established. In Kum. P. VIJAYA LAKSHMI's case (W. P. No. 14875/85) which is also just now disposed of. I have considered the case of a child born to a Scheduled Caste lady and Backward Class male and held as to under what circumstances, the child becomes a member of the Scheduled Caste. It was held that the child, though born to a Backward Class male and Scheduled Caste lady, must live along with the members of the scheduled castes, undergo the same disabilities - social, economic, etc. and also undergo disadvantages due to the practice of untouchability; the child must adopt the caste customs and habits and must be recognized and treated as a member of the Scheduled Caste by the community as a whole. In WILSON READE Vs. C.S. BOOTH<sup>7</sup> one James Alfred Reade, the father of Wilson Reade was an Englishman and his mother Ka Lainshap Phanwar was a Khasi Scheduled Tribe woman. They were married according to Tribal customs. Mr. Wilson born to them was treated as a tribe. He has given his children in marriage to Scheduled Tribes. He held several caste offices. He was elected to several elective offices as Scheduled Tribe. When he was elected to the Legislative Assembly, his election was challenged on the ground that he was not a Scheduled Tribe and the tribunal held that Mr. Wilson was not of pure blood of tribes and he would be an Anglo - Khasi. Therefore his election was set aside. On appeal, Mehrotra, J. while considering the question

whether Mr. Wilson could be considered to be a scheduled tribe, held that the adoption of the tribal customs, living with them, acceptance by the tribal community as a whole and recognition of the candidate are necessary. On a consideration of the evidence, it was held that Mr. Wilson was a Khasi Tribe. The ratio therein, in my respectfully view, would be a correct approach. No doubt, in N.E. HORO Vs. JAHANARA<sup>1</sup> strongly relied on by Mr. Choudary, the facts are, the respondent - a Christian married Jaipal Singh, a Munda Tribe and the marriage was celebrated according to Munda customary law. She was received as a member of the community. Under those circumstances, it was held that she became a member of the Scheduled Tribe and as such she is entitled to contest. The marriage cases are few and far between. But the cases of the alleged adoption are new devices invariable stem from the desire to claim the benefits under Article 15(4) and 16(4) to the detriment of the claims of the real Tribes.

As stated earlier, the public notification issued by the President under Article 342(1) is conclusive subject to amendment made by the Parliament under Art. 342(2) and the Court cannot declare the status of a particular citizen that he belongs to a Scheduled Tribe. The statute law or customary law cannot prevail over the fundamental law of the land, viz., Constitution, and is Suigeneries. The purpose of the Constitution is to assimilate the terrain Scheduled Tribes with the main stream of the society, viz., plain people, but the device of adoption, if it is motivated - to have unjust claim of the advantages envisaged under the Constitution, it would be the endeavour of the Court to discourage such attempts by adopting harmonious construction to sub serve the purpose of the Constitution. If the contention of the learned counsel is given

credence to, and accepted, it would be an easy in - road to defeat the object of Articles 15(4) and 16(4) by adopting legal devices as a means to infiltrate into the Scheduled Tribe list within the meaning of Article 366(25) and Article 342, which the statute law itself declares inapplicable, unless the Central Government by notification applies it, and frustrates the very purpose of the Constitution. Therefore, I have no hesitation to conclude that though it may be permissible for a plain man/ woman to go in adoption under customary law to a tribal; such an adoption shall be only for the purpose of personal law. But for the purpose of the Constitution, such a person is outside the fold of the Scheduled Tribe and he cannot be treated as a Scheduled Tribe Candidate.

It is next contended that the Admission Rules contained in G. O. Ms. No. 339, Medical & Health, dated May 29, 1985 do not envisage any enquiry being conducted with regard to the adoption and it envisages only for the purpose of verification regarding conversion. Therefore, the enquiry conducted by the second respondent - Director, Social Welfare, is without jurisdiction, is also devoid of any force. The rules are only intended to facilitate the procedure to be followed for verification of the social status claimed by the candidate. Social status emanates for the purposes of Article 15(4). Therefore, enquiry by the competent authority, viz., and 2nd respondent is a pre-condition. Unless the competent authority declares that the candidate belongs to a particular reserved caste / class or tribe, the candidate is not eligible either for admission or to continue the course of study if provisionally admitted. In *BHUVANESHWAR RAO Vs. THE PRINCIPAL, OSMANIA MEDICAL COLLEGE* this Court envisaged the scope of enquiry to be made in this regard and for the same reason, unless the enquiry is conducted, the petitioner automatically does not become eligible for admission. In this case, admittedly

enquiry was conducted and in the counter affidavit of the second respondent, as already extracted, he stated that as of fact, there is neither adoption nor the petitioner lived with the adopted mother and that the adoption is propped up only for the purpose of admission. This is a finding of fact based on enquiry conducted by the second respondent. That finding is based on material. "Even on the petitioner's own showing, he claimed in the college as a Backward Class citizen. Unless it is established as a fact that the petitioner assimilated himself to be a member of the Scheduled Tribe, adopting the customs of the Scheduled Tribes by his continued living with them and recognition as such by the members of that community, he is not entitled to be considered as a member of the Scheduled Tribe. As already held, it is for the purpose of personal law and not for the purpose of the Constitution. The social status certificate issued by the Mandal Revenue Officer was duly cancelled and it became final. As a result, he cannot claim admission as a member of the Scheduled Tribe.

The writ petition, therefore, does not warrant interference. It is accordingly dismissed, but in the circumstances, without costs. Advocate's fee Rs. 300/- (**AP High Court, WP No 11914 of 1985, B. Srinivasa rao Vs. Director of T.W. )**

**3) No constitutional benefits available for adopted persons.**

Constitution of India, Article 342(1) – One cannot claim the benefits of Scheduled Tribe under the Constitution by adoption unless he suffers the social disadvantages as being a member of that Scheduled Tribe – A person of one state where his community is not a Schedule Tribe cannot be declared as a member of Scheduled Tribe by migration to another State

where the said community is notified as Scheduled Tribe and cannot claim the benefits of Scheduled Tribe in that State.

**Held:** Though under the personal law a person on adoption or by marriage becomes member of the family of the adoptive father or the husband, as the case may be, and takes that caste, still he or she will not be entitled for the benefits or reservation under the Constitution unless he or she suffers the disadvantages incidental to the particular caste in the social strata.

Here is a case where the plaintiffs are claiming the benefits of Scheduled Tribe by virtue of the adoption of their father. No doubt, in the year 1949 when the third defendant was adopted, there might not have been any motive for the adoption i.e., for claiming the benefits as members of Scheduled Tribe because the presidential order was issued after the constitution came into force in 1950. But, the evidence shows that neither the third defendant nor his children i.e., plaintiffs have suffered any social disadvantage as members of Konda Kapu community. Though the third defendant was taken in adoption by a person belonging to Konda Kapu community, neither the third defendant nor his children i.e., plaintiffs would be entitled to the benefits under the Constitution as members of Scheduled Tribe.

Now, the classification of persons either as Scheduled Castes or Scheduled Tribes is only done by virtue of the notifications issued under Article 341 and 342 of the Constitution. Merely because Kondakapu community was recognized as Hill Tribe prior to the Constitution, that cannot be taken into account while considering the social status of the plaintiffs in claiming reservations as members of Kondakapu community under Article 342 of the Constitution.

Article 342 of the Constitution refers to the notification of the tribes as Scheduled Tribes in relation to that State or Union Territory. According to the Presidential order the Kondakapus in Orissa State do not belong to Scheduled Tribe. If a person belonging to Kondakapu community in Orissa State does not belong to a Scheduled Tribe, he cannot acquire the status of Scheduled Tribe by migration to another State i.e., Andhra Pradesh, where Kondakapu community is declared as Scheduled Tribe.

In the present case, though the third defendant was adopted by Lakshmi Naidu, belonging to Kondakapu caste in Orissa State, and became a member of that Community he did not get benefit of Scheduled Tribe because Kondakapu community is not notified as Scheduled Tribe in Orissa. When the third defendant does not belong to Scheduled Tribe in Orissa, by migration to Andhra Pradesh, he cannot claim the status of a person belonging to Scheduled Tribe and so the plaintiffs also cannot get the benefits of Scheduled Tribe.

The plaintiffs cannot therefore claim the benefits of Scheduled Tribe in Andhra Pradesh on both the grounds i.e., that they have not suffered any social disadvantage as being members of a Scheduled Tribe and also on the ground that as Konda Kapu community is not a Scheduled Tribe in Orissa they cannot claim the benefits of Scheduled Tribe in Andhra Pradesh.

Civil Procedure Code, 1908, Section 80 – Suit filed against Government maintainable even without issuing notice under Section 80 if permission is granted by Court under Sec. 80(2). (Second Appeal Allowed. **(District Collector, Vizianagaram Vs. Appikonda Rajendra kumar) Appeal No.255 of 1992 Decided on 9-4-1993**).

**CHAPTER - VII****RULE OF RESERVATIONS AND RECLASSIFICATION  
OF NOTIFIED COMMUNITIES.****1. Reservation based only on caste - Unconstitutional**

This is a case in which the reservation policy of the State of Mysore (Karnataka) was struck down by a constitution bench unanimously. In this significant judgement, reservation based only on caste was held unconstitutional.

**Facts:** A large number of candidates to professional colleges filed writ petitions in the Supreme Court alleging that but for the reservation made by the state government, they would have been admitted. On the other hand, students with less mark have been admitted. It was violative of Articles 15(1) and 29(2). The basis adopted for specifying backward classes was so unintelligible and irrational. The extent of reservation was so unreasonable that it amounted to a fraud on the Constitution. The government disputed all these and said that its order was protected by Article 15(4).

It was further ruled that the executive can pass orders on reservation. It is not necessary for the legislature to make provision for reservation.

Article 15(4) is a special provision, which was added to the Constitution in 1951. If an order is justified under Article 15(4), its validity cannot be denied under Article 15(1).

The backwardness must be social and educational. Caste is one indicator, but its role cannot be exaggerated. Otherwise, it would perpetuate caste. Social backwardness is the result



of poverty to a large extent. Occupations and place of habitation also determine backwardness.

Classification between backward and more backward classes made by the government was held to be unconstitutional. According to this criterion, nearly 90 percent of the state population became backward. Reservation of 68 percent was also inconsistent with Article 15(4) as it was unreasonable. The interests of the weaker sections must be balanced with those of society in general. It is a difficult task but in the guise of making special provision, practically all seats cannot be reserved. Reservation should be less than 50 percent.

The court concluded that the state government's order was a fraud on the constitutional power conferred under Article 15(4).

The court said that it was not its task to categorise the valid and invalid classification. It cannot also lay down what is the valid percentage. Article 15(4) gives that discretion to the state government. (**M. R. Balaji Vs. State of Mysore AIR 1963 SC 649**)

## **2. Reservation for BCs on basis of caste alone- Not sustainable**

The UP government order providing for reservation of seats for backward classes on the basis of caste alone by enumerating the castes mentioned in the list prepared by the pre-independent government in 1945 was held not sustainable by the High Court, calling it a "fraud on the Constitutional Power" conferred under Articles 15(4) and 16(4) of the Constitution.

**Facts:** The Petitioners, who were advocates, challenged in a writ petition the reservation of posts in the UP Judicial Service for Backward Class and several other categories. They alleged

that Ahirs, Kurmis and other castes listed as backward classes by the government order were not economically or socially backward reservation for them was made with political motive, it was alleged. The state government defended its list of backward classes, stating that caste was only one test of backwardness. The listed classes were not adequately represented in public service according to the government. It further argued that as early as in 1945, the Education Department of the Provincial Government has prepared a list of 59 communities that consisted of 38 castes belonging to the Hindu Community and 21 castes belonging to the Muslim community. This list was followed by the government.

**Ruling:** The backward classes list was held to be unsustainable and reservation on the basis of that was struck down. The 1945 list was presumably prepared on the basis that those castes were at that point of time educationally backward, though the tests applied have not to be disclosed. The phenomenal progress made after independence in the fields of irrigation, mechanization of agriculture, community development and the like has led to the Green Revolution transforming the face of the countryside. Therefore, many old social handicaps have disappeared. Moreover, successive general elections based on adult suffrage at all levels have led to shifts in centres of influence and prestige in society. Therefore, to proceed on the basis of the 1945 list “Would fly in the face of the repeated exhortations of the Supreme Court to constantly review the provision of different classes in the context of backwardness and cannot to allow reservation of seats on the basis of backwardness to become a vested interest (AIR 1971 SC 2303), the High Court emphasized. The government was directed not to make reservation of posts for

backward classes based on the prescribed list. (**Chotey Lal Pandey Vs. State of U. P AIR 1979 All. 135**)

**3. Denying the Reservation benefit is not proper**

Constitution of India, Arts. 342. 16 – Promotion – Benefit of reservation – S.T known as Halba/Halbi stands recognized in both State of Maharashtra as well as State of Madhya Pradesh – On States reorganization part of State of M.P i.e., Chindwara region had gone into the State of Maharashtra – Appellant being a S.T Halba/Halbi having origin in Chindwara region whether entitled to benefit of reservation in state of Maharashtra – Matter needs to be referred to Scrutiny Committee, constituted on basis of directions in 1994 (6) S.C.C 241 for verifying eligibility of appellant – Reversion of appellant on grounds that he is not entitled to benefit of reservation – Not proper. 2002 Lab IC 3471(Bombay), Reversed. (**Sudhakar Vithal Kumbhare. V. State of Maharashtra and others AIR 2004 Supreme Court 1036**)

**4. Carry forward vacancies rule not allowed.**

If sufficient number of candidates for the reserved vacancies are not available, can the government carry forward those vacancies to the next year? The Supreme Court said 'no' in this leading judgement, but changed its view in later years.

**Facts:** Devadasan was an assistant in the Central Secretariat. An examination was conducted for promotion to section officer in which he scored high marks. But he could not get promotion because of reservation for SC/ST. Though the reserved vacancies were only 17.7 percent a year, there was a 'carry forward' rule under which unfilled vacancies of the two previous years could be added to the present year. Applying that rule in the present year, 29 out of 45 seats went to SC/ST. That was 64 percent of the seats. The carry forward rule was

therefore challenged as violative of the equality guaranteed in Article 14 and Article 16(1) of the Constitution.

**Ruling:** The majority (4:1) on the constitution bench struck down the carry forward rule. The majority held that Article 14 envisaged equality among equals and not absolute equality. Article 16(4) provides for reservation for the backward classes who are not adequately represented in the services. But if the reservation was so excessive that it practically denied a reasonable opportunity to members of other communities, the latter have a valid complaint. Relying on AIR 1962 SC 36 and AIR SC 649, the judgement stated that while reserving seats for backward classes, the government should bear in mind the repercussions from year to year. What precise method should be adopted was a matter for the government to consider. But it must strike a reasonable balance between the claims of the backward classes and claims of other employees.

The court held that Article 16(4) was a proviso or an exception to Article 16(1). Therefore, a proviso cannot be interpreted to nullify or destroy the main provision. To hold that unlimited reservation could be made under Clause (4) would in effect efface the guarantee of equality in Clause (1) or at best make it illusory. No provision can be so construed as to destroy another provision in the Act, the majority judgement said. Reservation in excess of 50 percent would be unconstitutional.

However, Justice Subbarao wrote a dissenting judgement in which he held that Article 16(4) was independent of Article 16(1). It grants unlimited power to the government in reservation. The only two conditions are that there must be backward citizens, and they are not adequately represented in the services. Just because too many posts go to reserved candidates is no reason to assail the carry forward rule, unless “unreasonably disproportionate” number goes to them.

It is inevitable that there would be some deterioration in the standard of service, but the provision cannot be held to be bad on that account, the dissenting judge said.

This judgement of the Orissa High Court emphasizes that the SC/ST list in one state is valid only within that state. Those in other states cannot claim the benefit even if they are in central government services. (**T. Devadasan Vs. Union of India AIR 1964 SC 179**)

**5. Rule of reserved vacancy can be forwarded to the next year**

This Supreme Court Judgement states that reservation for backward communities would not be excessive and that an unfilled reserved vacancy could be carried forward to the next year.

**Facts:** The petitioner was a teacher employed the South-Eastern Railway. The dispute was over the promotion to the headmistress's post of the Kharagpur School. The Railway Board had prepared a roster by which 17.5 percent vacancies were reserved for SC/ST. It was also decided that if there was only a single vacancy, it should be treated as unreserved. If on account of this arrangement, a reserved vacancy was treated as unreserved, the reservation will be carried forward to the subsequent two years. The Petitioner lost her chance under this rule, because a SC teacher got the post. Therefore, she moved the Supreme Court challenging the validity and interpretation of the 'carry forward' rule. A number of orders were passed by the Calcutta high court in their petitions which are not relevant to the main question discussed in the judgement.

**Ruling:** The petition was dismissed, following the rulings in AIR 1963 SC 649 and AIR 196 SC 179. The court held that reservation for a backward community should not be so excessive as to create a monopoly or unduly disturb the legitimate claims of other communities. Following the above two judgements, the government had modified the 'carry forward' rule to fall within the Supreme Court rulings. The Railway Board prepared a model roster on that basis. It was further clarified that "if there by only one post to be filled, selection should invariably be held for two posts i.e., one actual and the other to cover unforeseen circumstances." In this case, a SC teacher was promoted in the carry forward quota, which was challenged. The Supreme Court dismissed the challenge, ruling that reservation could be carried forward to the next year and it would be available then even if there was only a single vacancy. (**A. R. Choudhary vs. Union of India AIR 1974 SC 532**)

**6. Rule of Reservation is also applicable to posts as well as promotions.**

This judgement follows the earlier leading decision in Rangachari's case, under different circumstances. It reaffirms the view that reservation under Article 16(4) can be made not merely at the initial recruitment but also to posts to which promotions are to be made.

**Facts:** The Haryana Government issued an order in 1963 in which it said that reservation for SC/ST/Backward classes was applicable only to new appointments, but not to promotions, which will be governed by merit and seniority alone. In 1964, two clarifications were made to the order which granted reservation to SC/ST/Backward classes in promotions also. Hira Lal and a SC member were both head assistants in the Forest Department. Though Hira Lal was senior, the SC

member was promoted to Superintendent's post due to the reservation rule. So Hira Lal moved the High Court against the reservation. The Court quashed the promotion. Therefore, the state appealed to the Supreme Court.

**Ruling:** The Supreme Court struck down the high court ruling and upheld the reservation. The Supreme Court observed that the High Court was swayed by the hypothetical cases under which reservation could lead to various anomalies such as the SC member leaping over several seniors. A head assistant could thus end up as deputy secretary. But the High Court had not shown that such possibilities were imminent or even likely.

The equality guaranteed in public employment under Article 16(1) is subject to several exceptions. Article 16(4) authorized the state to provide for reservation in promotion also. The extent of reservation to be made is primarily a matter for the state to decide. But its decision is subject to review. The reservation must be only to give adequate representation to the SC/ST/Backward Classes in the services. The exception provided in Article 16(4) should not make the rule in Article 16(1) meaningless. The mere fact that the reservation made may give extensive benefits to some persons does not by itself make reservation bad. "The length of the leap to be provided depends upon the gap to be covered."

It is an inevitable consequence of my reservation of posts that junior officers are allowed to take a march over their senior. This is bound to displease the seniors. Some of them also may get frustrated. But the Constitution-makers have given the protection to the backward classes in the interests of society, the judgement stressed. (**State of Punjab Vs. Hira Lal AIR 1971 SC 1777**)

## 7. Reservation rule in matters of promotions upheld

This is a leading judgement on reservation of promotion posts. It is also a long and difficult essay on the social problem of SC/ST, laced with poetry, quotations from philosophers and high-flown language used by Justice Krishna Iyer.

**Facts:** The Railway Board issued certain directives intended to protect SC/ST in matters of promotion. For instance, it provided for reservation for SC/ST only in selection posts to be filled by promotion. In promotion by selection from class III to class II, eligible SC/ST candidates were given one grade higher than that which were due to them on the basis of their record of service. It provided for rising of percentage of directly recruited SC/ST members who were below the standard. It further introduced 'carry forward' and provided further facilities to them. These benefits were challenged as discriminatory against the vast number of employees of the railways. They would affect the overall administrative efficiency and frustrate the promotional hopes of senior employees. The 'benign discrimination' has been blown up out of all proportion to the realities. This was done to benefit politically powerful castes and it would fragment society, it was argued.

**Ruling:** The Supreme Court dismissed the challenge in a unanimous but three separate judgements of the division bench. The main judgement of Justice Krishna Iyer stated the state may classify, based upon substantial criteria, groups of classes, this process did not necessarily violate Articles 14-16 of the Constitution. Since there is a great dividing line between SC/ST and the rest of the community the fundamental right of equality of opportunity has to be read as justifying the



categorization of SC/ST separately for the purpose of 'adequate representation' in the services. The classification is just and reasonable and valid under Articles 16(4) and 46.

However, reservation should not be applied with overkill. Obsession with backwardness and politicking with casts may in appropriate cases, demand judicial examination.

Reservation for SC/ST in matters of promotion has already been upheld in (1962) 2 SCR 586. The other provisions in the railway circulars were also upheld in the present judgement.

Further, the judgement underlined that constitutional questions must be answered in the social milieu which gives it living meaning. (**Akhila Bharatiya Soshit Karamchari Sangh (Railway) AIR 1981 SC 298**)

#### **8. Executive orders in matters of Promotions valid.**

This case deals with reservation in the audit department where there was no reservation for promotion. The Supreme Court held that the government could direct reservation by executive orders.

**Facts:** Four senior officers challenged the circular issued in 1973 by the Comptroller and Auditor General of India providing for reservation for SC/ST officers in promotion posts. The Allahabad high court allowed their writ petitions and directed the authorities not to enforce the circular and promote three SC/ST section officers to the post of Accounts Officers on the basis of the circular. Therefore, the Comptroller appealed to Supreme Court. The high court took the view that:

There was no reservation for SC/ST under the recruitment rules, 2) the circular was not based on a policy decision, 3)

the government cannot supplement the statutory rules to fill up gaps; it could be done only by amending the statutory rules according to Article 148 (5) of the Constitution.

**Ruling:** The Supreme Court overruled this view and held that the circular was valid and binding. It said that the high court was not right in stating that there could not be an administrative order directing reservation. The rules did not prove for reservation. But that government could direct reservation by executive orders. Administrative orders cannot be issued in contravention of the statutory rules but it can be issued to supplement the statutory rules. (See also AIR 1981 SC 298)

The high court had also faulted the circular as it was not issued by the President after consultation with the Comptroller. The Supreme Court stated that the circular was not issued by the President, but by the Comptroller. There was, however, proper consultation between the government and the Comptroller for issuing the circular. The fault pointed out by the high court was only in the form, and not with regard to substance. The circular ought to have been issued in the name of the President. But since the government had approved the circular, and since it was in accordance with the declared policy of reservation, the Comptroller cannot be restrained from enforcing it. (**Comptroller & Auditor General Vs. M. L. Mehrotra AIR 1991 SC 2288**)

**9. Reservation for SC/ST based on lower qualifying marks is valid.**

The Allahabad High Court holds that reservation for SC/ST in selection to the prestigious Indian Institute of Technology based on lower qualifying marks was valid.

**Facts:** This writ petition was filed seeking a direction to the government to cancel the admission to SC/ST students who has not secured the qualifying marks at the joint entrance examination for entry to the Kanpur IIT. The petitioner, who did not get admission, also sought a seat by eliminating the candidates who got admission through reservation.

**Ruling:** The High Court dismissed the petition and held that reservation for SC/ST was within the scope of Article 15 of the Constitution. It said that the allegations in the petition were vague. It was not stated who were the SC/ST candidates who were selected though they had not secured the qualifying marks. Nor was there any assertion as to the qualifying marks. The allegation that those who got only 10 percent marks were admitted was vague. The petitioner made two further arguments. Firstly, that the reservation was not protected by Article 15 and secondly, admission could be controlled only by an ordinance framed under Section 28 of the Institutes of Technology Act and not by any executive direction issued by the government. Answering the second point, the high court said that no ordinance had been framed, nor was there any administrative or executive order. Therefore, there was no violation of the Act.

Regarding Article 15, the court stated that the reservation was saved by clause (4) of Article 15; Clause (4) makes the equality provision of Article 15(1) inapplicable if the state makes special provision for the advancement of society and educationally backward classes of citizens or members of SC/ST. The government by making special provision for admission of SC/ST to technical institutions must be held to have done so for securing their advancement. Such a step would not be hit by Article 15(1) or Article 29(2) but would

be within the scope of Article 15(4). The purpose of reservation in this case is to make seats available to SC/St as they cannot be available to them without reservation. Once reservation has been made, the method of filling up of reserved seats may be different from the one adopted for filling up unreserved seats. The qualifying marks at all, the High Court ruled.

The court rejected the argument that the quality of engineers would be affected by the low qualifying marks for SC\ST. It said that the concession was granted only at the stage of admission. No concession is being granted in passing the final examination. Unless they qualify themselves through the education given to them at the institute they would not pass and the country would not get engineers who are not fully qualified. (**G.K. Gupta vs. Union of India AIR 1974 Allahabad 288**)

#### **10. Reducing the qualifying marks to fill the vacancies in reserved category seats- Valid**

Courts in the past had to decide whether the government can reduce the qualifying marks if sufficient numbers of candidates from the reserved category are not available. There were some apparently contradictory judgements of the high courts on this point. The Supreme Court gives a final decision to be followed by the high courts

**Facts:** According to the first notification of the Punjab Government, SC/ST candidates had to secure only 35 per cent marks in the competitive exam to qualify for medical admission. Hundred seats out of the total were reserved for SC/ST candidates. But only 32 of them qualified. Therefore, the general candidates had a claim to the vacant seats.

However the president issued a notification reducing the minimum percentage from 35 to 25 percent. This was challenged by the general candidates in the high court, which dismissed their petition. Hence, appeal to the Supreme Court.

**Ruling:** The Supreme Court rejected the argument that the Medical Council of India prescribed 40 per cent as the minimum and universities could not reduce it further. Quoting an earlier Supreme Court judgement on this point (*State of M.P vs. Nivedit Jai*, (AIR 1981 SC 2945)) the court pointed out that the authority may prescribe the eligibility of candidates for admission. As to how the selection has to be made out of the eligible candidates is a matter which depends upon circumstances prevailing in a particular state. Hence the council has no say.

It was further pointed out that in the *Nivedita Jain* case the state government fully deleted the prescription of the percentage of marks in the selection examination. “That was certainly a worse situation than the one before us. Yet that action was upheld,” the judgement underlined.

The court also rejected the argument that the reduction of marks was arbitrary and against the principle of estoppels. The government had intended that 100 seats would go to SC/ST. When enough candidates were not available, the marks were reduced. The state government has explained the circumstances in which the step was taken. The court accepted it and dismissed the appeal. The court, however, stressed that the standard of medical profession should not be compromised. The government and the Medical Council should cooperate to maintain high standards, the judgement stated. (***Aarti Gupta Vs. State of Punjab***. AIR 1988 SC 481)

### **11. Reclassification of SCs without consultation of National Commission of SC&STs- Unconstitutional**

Constitution of India, Articles, 14, 15(4), 16(1), 16(4), 341(1) and 338(9) – Reclassification or sub-classification of Scheduled Castes is a major policy matter affecting Scheduled Castes – Such a sub-classification made by State Government though permissible but made without consulting National Commission for Scheduled Castes and Scheduled Tribes which is mandatory – Unconstitutional being violative of Articles 338(9) and 14 and 16(1) of the Constitution of India – impugned G.Os. categorizing Scheduled Castes into A, B, C and D groups fixing percentage of reservation for each group in proportion to their population in public appointments and admissions to educational institutions without consulting National Commission but based only on the Report of Commission of Inquiry appointed under Commission of Inquiry Act – Quashed being ultra vires the Constitution – Report of Commission on Inquiry stating that certain groups of communities whose sub-castes are listed in AP Scheduled Castes Presidential Order, 1950 are receiving benefits of reservations wholly disproportionate to their population is a major policy matter affecting Scheduled Castes on which State Government shall consult National Commission under Article 338(9) of the Constitution. **(B. Narayana and others Vs. Government of AP represented by its Chief Secretary and others, 1997(5) ALT 292 (F.B))**

### **12. Categorization of SCs declared by President of India- Not violative of Constitution**

Section 3 – Act providing for classification of Scheduled Castes as declared by the President of India under Article 341

of the Constitution into four further categories namely A, B, C, D and apportioning the reservation of 15% of the Scheduled Castes amongst the said four categories in accordance with the population of each category in the State – The said categorization is not violative of either Article 341 or Article 15 or Article 16 of the Constitution – State Legislature is quite competent to enact the Act – It is not a colourable Legislation or a Legislation made mal fide – **(Mallela Venkata Rao and others Vs. State of Andhra Pradesh and others, 2000 (6) ALD 555 (FB))**.

**13. Classification of groups amounts to tinkering of Presidential List- Unconstitutional**

Constitution of India, Arts. 341, 15, 14, 16, Sch. 6 List 2 Entry 41, List 3, Entry 25 – Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act (20 of 2000), S.3 – Scheduled castes – Presidential list – State legislature or its executive has no power of disturbing the list – Castes once included in Presidential List form a class – Any further classification of this class would be tinkering with presidential List – A. P Act sub-classifying Scheduled Castes and redistributing reservation already made – is unconstitutional and beyond legislative competence – (Per Court) – Creamy layer test cannot be applied. **(E.V. Chinniah V. State of Andhra Pradesh and others WITH M/s. Malamahanadu Registered Society V. State of Andhra Pradesh and others . WITH Mallera Venkata Rao and others V. state of Andhra Pradesh and others WITH Kota Samanth V. State of Andhra Pradesh and others AIR 2005 SC 162)**

**14. Split reservations among the STs- Not permissible.**

Constitution of India – Articles 338 and 342 – Constitution (Scheduled Tribe) Order, 1950 – No split reservations among the Scheduled Tribes mentioned in the Presidential Order is permissible – Petitioner cannot claim any preference or admission into the medical college on the ground that she belongs to “Koya” community (Scheduled Tribe) as the said tribe is not duly represented in the admissions made. (**P. Neeraja and Anr. V. Union of India and ors**) (1998 (2) ALD 532))

**15. Rule of Reservation to Migrant SCs - Valid**

Constitution of India, Arts 16(4), 341(1) – Constitution (Pondicherry) Scheduled Castes Order (1964), Para 1 – Appointment - In Union Territory of Pondicherry – Post of Selection Grade Teachers – Reserved quota for Scheduled Caste candidates – Benefit of reservation given to migrant Scheduled Caste candidates from other States – Not invalid. (**S. Pushpa and others Vs. Siva Shanmugavelu and others** AIR 2005 SC 1038).



**ANNEXURES****1. A.P (S.Cs, S.Ts, and B.Cs) Regulation of Issue of Community Certificates Act 16 of 1993**

An Act to regulate the issue of Community Certificates relating to persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and matters connected therewith or incidental there to.

Whereas, it has been brought to the notice of the Government that candidates who seek employment in Government Departments, Public Sector Undertakings and such other organizations and candidates seeking admission into educational institutions against the vacancies or, as the case may be, the seats reserved for the Scheduled Castes, Scheduled Tribes and Backward Classes are producing false community certificates and securing employment or seats, as the case may be.

And whereas, by securing such employment or admission on the basis of false community certificates the benefits of special provisions made for the advancement of the Scheduled Castes, Scheduled Tribes and the Backward Classes in the matter of public employment and educational opportunities are not reaching such Castes, Tribes and Classes;

And whereas, the Government have decided to curb effectively the evil practice of producing false community certificates by devising a strict procedure for the issue of

such certificates and prescribing deterrent punishment to those who produce false community certificates.

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty-third year of the Republic of India, as follows:-

**Short title extent and commencement:-**

1. (1) This act may be called the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of community Certificates Act, 1993.
- (2) It extends to the whole of the State of Andhra Pradesh.
- (3) It shall come into force on such date as the Government may, by notification, appoint.

**Definitions:-**

2. In this Act, unless the context otherwise requires,
  - (a) 'Backward Classes' means, any socially and educationally backward classes of citizens recognized by the Government for purposes of Clause (4) of Article 15 of the Constitution of India;
  - (b) 'Community certificate' means, the certificate issued by the competent authority indicating there in the Scheduled Caste, the Scheduled Tribe or the Backward Class, as the case may be, to which the person belongs;
  - (c) 'competent authority' means, any officer or authority authorized by the Government by notification to perform the functions of the competent authority under this Act, for such area or for such purposes as may be specified in the notification;

(d) 'educational institutions' means, any school, junior college, degree college, college of education, polytechnic college, industrial training institute, college of Fine- Arts and Architecture, college of Music and dance, Engineering College, Medical College, Ayurvedic college, Homeopathic college, Unani College, Dental College, College of Nursing, Nurses Training School, Health Visitors Training school, colleges under the control of Andhra Pradesh Agricultural University and various colleges under the control of any University established by an Act of the State Legislature and such other institutions imparting education as may be notified from time to time;

(e) 'Government' means, the State Government of Andhra Pradesh;

(f) 'local authority' means, in relation to local areas comprised within the jurisdiction of Municipal Corporation, the concerned Municipal Corporation and in relation to any other local area in the State, the concerned municipal Council, Zilla Praja Parishad, Mandal Praja Parishad, Gram Panchayat or township having jurisdiction over such local area;

(g) 'notification' means, a notification published in the Andhra Pradesh Gazette and the word 'notified' shall be construed accordingly;

(h) 'prescribed' means, prescribed by rules made by the Government under this Act;

(i) 'scheduled castes and scheduled tribes' shall have the meanings respectively assigned to them in Clause (24) and Clause (25) of Article 366 of the constitution of India;

**Application of a community certificate Cancellation of false community certificate**

3. (1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the state for the students of the State or any other benefit under any special provisions made under Clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.
- (2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the fifth Schedule to the Constitution of India, or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

Explanation:- For the purposes of this section and section 13, 'Scheduled Areas' means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution.

4. **Community Certificate to be issued by competent authority:—**(1) The Competent Authority may, on an application made to it under section 3, satisfy itself about the

genuineness or otherwise of the claim made therein and thereafter issue a community Certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer or authority other than the competent authority shall be invalid.

(2) Before the issue or rejection of a certificate under sub-section (1), the competent authority shall follow such procedure as may be prescribed.

- 5. Cancellation of the false Community Certificate:—**(1) Where, before or after commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo-moto or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.

6. Burden of proof: Where an application is made to the competent authority under section 3 for the issue of a community certificate in respect of Scheduled Castes, Scheduled Tribes or Backward Classes or in any enquiry conducted by the competent authority or the authority empowered to cancel the community certificate or the appellate authority under this Act or in any trial or offence under this Act, the burden of proving that he belongs to such Castes, Tribe or Class shall be on the claimant.
7. **Appeal and Review:**— (1) Any person aggrieved by an order passed under sub-section (1) of section 4 by the competent authority rejecting an application made to it under section 3, may within thirty days from the date of receipt of such order, appeal to the District Collector and the District Collector may after giving the appellant an opportunity of being heard either confirm the order appealed against or set aside the said order and direct the competent authority to issue a community certificate.

(2) Any person aggrieved by an order passed under section 5, by the District Collector may, within thirty days from the date of publication of such order in the Andhra Pradesh Gazette, appeal to the Government and the Government may, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against.

(3) The Government may, on an application received from any person aggrieved by an order passed by the Government under sub-section (2) of section 5, within thirty days of the publication of that order in the Andhra Pradesh Gazette, review any such order if it was passed by them under any

mistake, whether of fact or law or in ignorance of any material fact.

(4) Pending disposal of an appeal under sub-section (2) or review under sub-section (3), it shall be competent for the Government to stay the operation of the order against which an appeal or review, as the case may be, is filed.

- 8. Power of revision by Government:—**(1) The Government may, at any time, either suo-moto or on an application made to them within the prescribed period, call for and examine the record, relating to any decision made or order passed by any person, officer or authority subordinate to them for the purpose of satisfying themselves as to the legality, regularity or propriety of such decision or order and if, in any case it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

- 9. Competent authority to exercise the powers of the Civil Court:—** The Competent authority shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure 1908 (Central Act. V of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or Office; and
- (e) issuing commissions for the examination of witnesses or documents.

**10. Penalties:—** Whoever obtains a community certificate by:-

- (a) furnishing false information; or
- (b) filing a false statement; or
- (c) any other fraudulent means;

shall, on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a lesser term or fine.

**Comments:**

As the proceedings of the MRO and the certificate issued by him are presumably brought into great haste without following the procedure enumerated in the Act and Rules, the court directed higher authorities to enquire and take appropriate action against the concerned officers responsible for issuing



such certificate. *A.Prathyusha Vs. NTR University of Health, 2000(1) ALT 543.*

- 11. Benefits secured on the basis of false Community Certificate to be withdrawn:-** (1)Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes or secures any appointment in the Government, local authority or, in any other company or corporation owned or controlled by the Government or in any aided institution against a post reserved for such Castes, Tribes or Classes or enjoys any other benefit intended exclusively for such Castes, Tribes or Classes, by producing a false Community Certificate shall, on cancellation of the false Community Certificate, be liable to be debarred from the concerned educational institution or as the case may be, discharged from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.
- (2) Any Amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered as an arrear of land revenue.
- (3) Any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.

(4) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures any benefit reserved for Scheduled Castes, Scheduled Tribes or Backward Classes other than those mentioned in section 12 by producing a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a lesser term or fine.

**12. Penalty for securing an appointment of election to political offices etc. on the basis of false community certificates:-**

(1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures an appointment in Government or other institutions referred to in section 11 against the posts reserved for the Scheduled Castes, Scheduled tribes or Backward Classes or is elected to any local authority or co-operative society against the offices reserved for such Castes, Tribes or Classes on the basis of a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees.

Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a lesser term or fine.

(2) Whoever not being a person belonging to a Scheduled Tribe secures any benefit or protection intended for a member of a Scheduled Tribe under a notification, direction or regulation made under the Fifth schedule to the Constitution of India or under any other law in force in the Scheduled Areas on the basis of a false community certificate shall, on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees.

**13. Penalty for issuing a false community certificate:—**

(1) Any person or authority performing the functions of competent authority under this Act, who intentionally issues a false community certificate, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and also with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a lesser term or fine.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

- 14. Penalty for a betters:—** Whoever abets any offence punishable under this Act shall be punished with the punishment provided for in this Act for such offence.

**Comments:**

As the proceedings of the MRO and the certificate issued by him are presumably brought into great haste without following the procedure enumerated in the Act and Rules, the Court directed higher authorities to enquire and take appropriate action against the concerned officers responsible for issuing such certificate. *A.Prathyusha Vs. NTR University of Health, 2000 (1) ALT 543.*

- 15. Offences to be tried summarily:—** Notwithstanding anything contained in the Code of Criminal procedure, 1973, (Central Act. II of 1974) any offence punishable under sections 10, 11 and 12 of this Act may be tried summarily by a Magistrate of the first class.
- 16. Offences under the Act. to be cognizable:—** Notwithstanding anything contained in the code of Criminal Procedure, 1973, all offences under this Act, shall be cognizable and non-bailable.
- 17. Bar of Jurisdiction of Civil Courts:—** No Civil Court shall have jurisdiction in respect of any order passed by any officer or authority under this Act and no stay or injunction shall be granted by a court in respect of any action taken or to be taken by such officer or authority under this Act in pursuance of any power conferred by or under this Act.
- 18. Protection of acts done in good faith:—** No suit, prosecution or other legal proceedings shall lie against any person for

anything which is in good faith done or intended to be done in pursuance of this Act or the rules made there under.

**19. Act to override other laws:—** The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time-being in force.

**20. Power to make rules:—** (1) The Government may by notification make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall immediately after it is made be laid before the Legislative Assembly of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**21. Transitional Provision:—**A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act shall, unless it is cancelled under the provision of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.

**2. The A.P. SC., ST and Backward Classes – Issue of Community, Nativity and Date of Birth Certificates Rules, 1997.**

**(G.O. Ms. No. 58, Social Welfare (J) 12th May, 1997)**

In exercise of the powers conferred by sub-section (I) of section 20 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), the Governor of Andhra Pradesh hereby appoints 16-5-1997 as the date on which the provisions of the Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes Issue of Community, Nativity and Date of Birth Certificates Rules, 1997, shall come into force in all the areas of the State of Andhra Pradesh.

**Rules:**

- 1. Short title and commencement of Rules:—** These rules may be called the Andhra Pradesh (Scheduled Castes, Scheduled Tribes & Backward Classes) Issue of Community Nativity and Date of Birth Certificates Rules, 1997.
- 2. Definitions:—**In these rules, unless the context otherwise requires:-
  - (a) “Form” means a form appended to these rules.
  - (b) “Act” means the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1993 (Act No.16 of 1993).

(c) “Competent Authority” means the authority specified under column (2) of Annexure-I appended to these rules, for issue of certificates to the communities specified in column (1) within the territorial jurisdiction as specified in column (3) thereof.

(d) “Traditional Habitat” of a tribe means the area in which a tribe or part or group of that tribe is found inhabiting traditionally, on the date of notification of that tribe or part or group of that tribe as a Scheduled Tribe for the first time in the State of Andhra Pradesh.

3. **Community Nativity and Date of Birth Certificates:—** The form for issue of Community, Nativity and Date of Birth Certificates is as specified in Form III appended to these Rules.
4. **Procedure for Application:—** (a) Every applicant / parent / guardian who belongs to a Scheduled Caste, Scheduled Tribe, Backward Class, desirous of declaring his social status as that of a Scheduled Caste, Scheduled Tribe or a Backward Class, shall submit an application in the prescribed Form I/II to the Competent Authority, well in advance i.e. six months, as far as possible, particularly when seeking admission to the educational institutions or appointment to a post.  
  
(b) If the applicant is a minor, the parent/guardian shall submit the application form as mentioned in clause (a) above.
5. **Procedure for Verification: —** (a) On receipt of the application, the competent authority or any officer authorised by him in this regard shall ensure that the applicant has furnished complete information in all the columns of Form I/

II and, shall then give the acknowledgement slip as appended to Form I/II, in token of having received the application. The Competent authority shall then verify the information / documents / evidence furnished by the applicant / parent / guardian in Form I/II. If the Competent Authority is satisfied with the correctness of the information / documents / evidence furnished by the applicant / parent/guardian, he shall issue the Community, Nativity and Date of Birth certificates in Form III within 30 (thirty) days of the receipt of the application in Form I/II. The Competent Authority shall specify in Form III the sub-caste of the SC claimant and the sub-tribe/sub-group of the ST claimant as listed out in Annexure – I appended to these Rules.

(b) If the Competent Authority feels that further enquiry is necessary, he shall then examine the school records, birth registration certificate, if any, and also examine the parent / guardian or applicant, in relation to his/her/their community. He may examine any other person who has the knowledge of the social status of the applicant / parent/guardian, as the case may be. He shall take into account, in the case of Scheduled Tribes, their anthropological and ethnological traits, deity, rituals, customs, and mode of marriage, death ceremonies / method of burial of dead bodies etc. before issuing the Community, Nativity and Date of Birth certificates. Competent authority shall have power to call for further information and/or collect such evidence / document and also conduct such enquiry as specified in Form IV, if deemed necessary. Notice in Form IV should be issued to the Parent / Guardian, in case the applicant is a minor, to appear before the competent authority.



(c) The Notice as specified in Form IV should give clear 15 (fifteen) days from the date of receipt of the notice by the parent/applicant/guardian, to attend the enquiry. In such case not more than 30 (thirty) days from the date of the receipt of the notice should be allowed.

(d) Where the person on whom a notice in Form IV is served by the Competent Authority fails to respond on the date mentioned therein, the Competent Authority may reject or confirm the claim of the person based on the document/ evidence available with the Competent Authority (furnished while applying in Form I/II). He may also take into account any other material/ evidence/ documents gathered by him in that particular case. The Competent Authority shall cause enquiry, following due process of law, to verify the genuineness or otherwise of the information/ evidence/ documents furnished or recorded, from such persons as called for in the enquiry specified in Form IV. He may also cause to collect any other documentary or related evidence about the genuineness or otherwise of the information furnished by the persons called for in the enquiry.

(e) The Competent Authority should give reasonable opportunity to the applicant/parent/ guardian to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode may be published in the village or locality to which the applicant / parent / guardian belongs. If any person or association opposes such a claim, opportunity to produce the evidence in person before the Competent Authority may be given to him or her. After giving such an opportunity to that person or association the Competent Authority may make such enquiry as it deems

expedient and consider claims of the applicant/guardian/parent vis-à-vis the objections raised by his/her/their opponent.

(f) The Competent Authority shall requisition the services of Mandal Revenue Inspector, Village Development Officer, Village Administrative Officer or such other persons deemed necessary, to assist him in the enquiry to verify the veracity or otherwise of the community claims made by the applicant/parent/guardian. However the responsibility for issue or rejection of the claim shall rest on the Competent Authority only.

(g) In respect of the tribal communities who are not “traditional inhabitants” of the area of territorial jurisdiction of the “Competent Authority”, as specified in column 3 of Annexure-I appended to these Rules, the Competent authority shall make a reference to the District Tribal Welfare Officer concerned to provide such professional assistance as available with him or with the Tribal Cultural Research Institute, Hyderabad, to confirm or reject the claim of the applicant.

(h) The Competent Authority shall confirm or reject the claim for the Community, Nativity and Date of Birth Certificate, after conducting the enquiry as mentioned in the paras above, within a period not exceeding 60(sixty) days from the date of receipt of the application by him in Form I/II.

(i) The Competent Authority, in the cases of doubtful claims, shall refer the matter to the Chairman of the scrutiny Committee formed at the District level under Rule 8 i.e. Joint Collector of the district, for the recommendations of the Committee, with regard to the issue of the Community,

Nativity and Date of Birth Certificate as applied for by the applicants. On receipt of the recommendations of the Scrutiny Committee, the Competent Authority shall accordingly confirm or reject the claims of the applicants.

**Comments:**

While conducting enquiry, the scrutiny committee has to verify the genuineness or otherwise of the information furnished to it or recorded by it from such persons who have given the evidence, both oral and documentary and consider the objections raised by any person during the enquiry by following the due process of law. *M.Karunakar Vs. State of AP., 2001(1) ALT 688.*

6. **Burden of Proof:** It is the responsibility of the applicant to produce necessary evidence/documents while applying in Form I/II to the Competent authority and also as called for by the Competent Authority/Scrutiny and Review Committee at the State level/ District Collector / Scrutiny Committees at the District level / Government, from time to time, while enquiring into the claims for the issue of Community, Nativity and Date of Birth Certificate.
7. **Scrutiny and Review Committee (State Level):** A Scrutiny and Review Committee shall be constituted at the State Level with the following officers:
  - (a) (1) Principal Secretary to Government, – Chairman  
Social Welfare Department
  - (2) Commissioner, Social Welfare – Member
  - (3) Commissioner, Tribal Welfare – Member

(4) Commissioner, Welfare of Backward – Member Classes

(5) Inspector General of Police – Member C.B.C.I.D. (P.C.R. & Vigilance Cell)

(6) Additional Secretary/Joint Secretary/Deputy Secretary to Government, Social Welfare Department – Member (Convenor)

(b) This Scrutiny and Review Committee shall meet once in three months or as often, depending on the necessity.

(c) Presence of three members will form the required quorum for the meeting of the Committee.

(d) This Committee shall review and monitor the functioning of the scrutiny committees at the District level constituted under Rule 8. It shall render necessary advice to the Government on various policy decisions to be taken for streamlining the procedure on any other issues related to the issuing of Community Certificates as per Act.

(e) The Committee may also render necessary guidance and advice to the Government on cases referred to it, where divergent and conflicting enquiry reports are received by the Government, in respect of the community claims.

**8. Scrutiny Committee (District Level):**

(a) In every District, Scrutiny Committee shall be constituted with the following officers:

(1) Joint Collector – Chairman

(2) District Revenue Officer – Member (Convenor)

(3) Deputy Director – Member (Social Welfare)

Deputy Director – Member (Tribal Welfare)/ District  
Tribal Welfare Officer

Deputy Director – Member (Backward Classes Welfare)/  
District Backward Classes

Welfare Officer

(4) Officer of the Research – Member organization in the  
Commissionerate of SW/TW nominated by the concerned  
Heads of the Departments.

(5) Officer representing the PCR/ – Member Vigilance Cell  
in the District.

(b) The Scrutiny Committee shall meet atleast once in a  
month or as often, depending on the cases referred to it.

(c) Presence of three members will form the required quorum  
for the meetings of the Committee.

(d) (1) The Scrutiny Committee, on receipt of the cases  
referred to it by the Competent Authority under Rule 5(I)  
shall conduct enquiry regarding the doubtful claims, by giving  
notice in Form V to the applicant, within the period specified  
in the notice. This period should not be less than 15 (fifteen)  
days from the date of service of the notice on the applicant  
and in no case, on request, more than 30 (thirty) days should  
be allowed. This notice shall be served on the applicant  
through the Competent Authority who referred the case to  
the Committee.

(2) The notice referred to in Form-V shall be served on the  
parent/guardian in case the applicant is a minor.

(3) Where the person on whom a notice in Form-V is served by the Scrutiny Committee fails to respond on the date mentioned in the notice, the Scrutiny Committee may finalize its recommendations based on the material/documents/evidence made available to the Committee by the Competent Authority.

(4) The Scrutiny Committee shall cause enquiry, following the due process of law, to verify the genuineness or otherwise of the information furnished or recorded from such persons as called in the enquiry as per Form V. It shall also cause to collect documentary evidence, or any other related evidence about the correctness or otherwise of the information furnished or objections raised by any person during the enquiry.

(5) The Scrutiny Committee shall examine the school records, birth registration certificates, if any, furnished by the persons during the enquiry. It may also examine any other person who may have knowledge of the community of the applicant. With reference to the claims of Scheduled Tribes, it may examine the anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies / method of burial of dead bodies etc., of that particular tribe, to finalise its recommendations to the Competent Authority.

(6) The Scrutiny Committee should give reasonable opportunity to the applicant to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode may be published in the village or locality of the applicant and if any person or association opposes such a claim, opportunity to produce evidence in

person before the Committee may be given to him or her. After giving such an opportunity to that person, the Committee may make such enquiry as it deems expedient and finalize its recommendations, with brief reasons in support thereof, to the Competent Authority.

(7) The Scrutiny Committee shall examine the report of enquiry conducted by the Revenue Department furnished to it by the Competent Authority. It may also obtain expert opinion from the Commissionerate of Social Welfare/Tribal Welfare through the officers' of the Research organizations of these Commissionerates who are the members of the Scrutiny Committee, if deemed necessary. These enquiry reports may be compared and then recommendations of the Scrutiny Committee may be finalized as to whether the community claim of that applicant is found to be false or genuine.

(8) The Chairman of the Scrutiny Committee i.e., Joint Collector of the District, shall send the recommendations of the Committee to the Competent Authority stating clearly whether the community claim of the person in question or his or her children, is genuine or false with reasons thereof, within 45 days from the date of the receipt of the case referred to it by the Competent Authority.

**Comments:**

While conducting enquiry, the scrutiny committee has to verify the genuineness or otherwise of the information furnished to it or recorded by it from such persons who have given the evidence, both oral and documentary and consider the objections raised by any person during the enquiry by

following the due process of law. *M.Karunakar Vs. State of AP.*, 2001(1) ALT 688.

Issuance of the show-cause notice of cancellation without any inquiry suffers from jurisdictional errors. *J.Anuradha Vs. Govt. of AP, Social Welfare Department and another*, 2000(5) ALT 592.

Rule 8 of the Rules prescribes the procedure for conduct of enquiry as regards doubtful claims as well as cancellation of certificated obtained by fraudulent methods. (*S.Sasidevi Vs. Commissioner of Tribunal Welfare. 2002(1) ALD 841 (DB)=AIR 2002 AP 184 = 2002(2) ALT 32*).

#### **9. Fraudulent claims:**

1. Where the District Collector receives a written complaint from any person or has otherwise reason to believe that a person not belonging to a Scheduled Caste or Scheduled Tribe or Backward Class has obtained a false Community, Nativity and Date of Birth Certificate to the effect that either himself/herself or his/her children belong to such a Scheduled Caste /Scheduled Tribe / Backward Class, the District Collector shall refer the case to the Chairman, Scrutiny Committee i.e. Joint Collector of the district (formed under rule – 8) to enquire into such cases and send its findings to the District Collector.
2. The Scrutiny Committee on receipt of such cases to it by the District Collector shall follow the procedure as listed in Rule – 8 (d), (1) to (7) except that it shall serve the notice in Form VI on the person involved in the case.



3. The Scrutiny Committee shall in such cases cause enquiry, by the Protection of Civil Rights / Vigilance Cell also i.e. through the officer representing the Protection of Civil Rights / Vigilance Cell as the member of the Committee. The Protection of Civil Rights / Vigilance cell should investigate the social status claimed by the person by sending the Inspector of Police to the local place of residence of that person and where he/she usually resides or in case of migration, to the town or city from which he/she originally hailed from. The Inspector should personally verify and collect all the facts about the community claim of the person or the guardian of the parent, as the case may be.
4. Where the person on whom a notice served in Form-VI fails to respond to the notice within the period specified in the notice, the Scrutiny Committee may finalize its findings based on the materials made available by the District Collector i.e., enquiry report of the Revenue Department, enquiry report of the Protection of Civil Rights / Vigilance cell and the reports of the expert / officer of the Research Organisation of the Commissionerate of Social Welfare/ Tribal Welfare.
5. The Scrutiny Committee shall compare the enquiry reports of the Revenue Department furnished by the District Collector, the reports of the Protection of Civil Rights / Vigilance cell and the reports of the expert or officer of the Research Organisation of the Commissionerate of Social Welfare/Tribal Welfare and then finalise its findings whether the Community, Nativity and Date of Birth Certificate given to the person or his/her children is genuine or otherwise.
6. The Scrutiny Committee shall furnish its findings to the District Collector within 60 days from the date of the receipt of the reference from the District Collector.

7. The District Collector shall then decide whether the certificate holder is genuine or fraudulent and in case of his having obtained a Community, Nativity and Date of Birth Certificate fraudulently, the District Collector shall pass an order canceling the certificate issued, within one month from the date of receipt of the findings of the Scrutiny Committee and shall issue notification to that effect, to be published in the District Gazette. The District Collector shall also take necessary steps to initiate action against the Competent Authority who issued the Community, Nativity and Date of Birth Certificate to the wrong person, besides taking other actions specified in Rule 15. He shall communicate the cancellation of the certificate to the educational institution/ employer/ appointing authority as the case may be forth with.
8. In respect of the Bariki SC Community, such written complaints if received by the Collector shall be referred by him to the Government, for necessary enquiry and final action to cancel the certificate, since the District Collector is the Competent Authority to issue the Community, Nativity and Date of Birth Certificate for this community.
9. The Collector or Government, either suo-moto, or on a written complaint by any person, or on request by an employer/ educational Institution/appointing authority, shall enquire into the correctness of any Community, Nativity and Date of Birth Certificate already issued and if it is found that the certificate is obtained fraudulently, then the District Collector or the Government, as the case may be, shall cancel the certificate as per section 5 of the Act.

**Comments:**

Issuance of the show-cause notice of cancellation without any inquiry suffers from jurisdictional errors. *J.Anuradha Vs. Govt. of AP, Social Welfare Department and another, 2000 (5) ALT 592*. Rule 9(3) of the Rules runs counter to the provisions of the Act and the Rule making authority in this case exceeded its powers in providing an inquiry that frustrates the very objective of the Act. *M.Karunakar Vs. State of AP 2001(1) ALT 688*.

Scrutiny Committee is the competent authority conduct an enquiry in terms of the procedure laid down under Rules 8(d) (2) to 7 and not the Commissioner of Tribal Welfare. *D.Sudershan Vs. Govt. of AP, 2002 (3) ALD 678 (DB)*

**10. Appeals:**

An appeal shall lie to the District Collector within thirty (30) days from the date of receipt of rejection orders on the application for Community, Nativity and Date of Birth Certificate passed by the Competent Authority. The appellate authority shall examine the grounds on which the appeal is filed and also receive or call for further evidence/documents, if considered necessary, and pass such orders as the appellate authority considers fit and proper in the matter. In case of Bariki caste, the appeal shall lie to the Government against the orders of the District Collector.

**11. Review:**

1. The Government may, on an application filed by any person aggrieved by an order passed by the District Collector under sub-section (1) of section 5 of the Act within 30 (thirty)

days of receipt of that order, review such orders if it was passed by the District Collector under any mistake, whether of fact or law or in ignorance of any material fact.

2. Pending disposal of an appeal under rule 10 or a review under rule 11(1) above, it shall be competent for the Government to stay the operation of the order against which an appeal or review, as the case may be, is filed.

**12. Revision:**

The Government either suo-moto, or on an application filed by any person aggrieved by the orders issued by the authority authorized under these rules, shall entertain such application as a revision petition, within sixty (60) days of the communication of the order passed under these Rules and pass appropriate orders in accordance with the provisions contained in section 8 of the Act, 16 of 1993.

**13. Bar of Jurisdiction of Civil Courts:-**

No civil court shall have jurisdiction in respect of any order passed by any officer or authority under the Act and no stay or injunction shall be granted by a court, in respect of any action taken or to be taken by such officer or authority under the Act, in pursuance of any power conferred by or under the Act, as provided in section 17 of the Act.

**14. Exercising of Powers of Civil Courts:**

The Competent Authority / the Appellate Authority / the Scrutiny and Review Committee at the State level / Scrutiny Committee at the District level / Government shall exercise the powers of Civil Courts under the Code of Civil procedure,

1908 in summoning the witnesses as defined in section (9) of the Act in addition to (a) Receiving evidence on affidavit; (b) Summoning and examining any person or documents; (c) Making local enquiry and inspections.

**15. Action on false certificate: (penalties)**

(a) Any person, who obtains a false Community, Nativity and Date of Birth Certificate as belonging to a community to which he does not in fact belong, shall be dealt with as per the provisions under Section 10, 11, 12 of the Act; (b) Action under sub-rule (a) above against a person shall be referred to the court of competent jurisdiction and will be initiated by the District Collector under whose jurisdiction the person obtained the false Community, Nativity and Date of Birth Certificate; (c) The District Collector shall initiate action under section 13 of the Act against an officer who issued the false Community, Nativity and Date of birth certificate to any person contrary to the provisions of the Act.

**16. Validity of Community, Nativity and Date of Birth Certificate:**

The Community, Nativity and Date of Birth Certificate issued by the Competent Authority in accordance with these provisions, shall be a permanent one.

**17. Procedure for issuing of duplicate Community, Nativity and Date of Birth Certificate:**

When the holder of the Community certificate loses the certificate, he/she shall immediately report this to the Competent Authority. He/she shall submit an application to the Competent Authority, furnishing the particulars of the original Community Certificate held by him/her. On receipt of such application, the Competent Authority shall verify his

records and issue duplicate Community, Nativity and Date of Birth Certificates within fifteen (15) days of the receipt of the application by him/her. An affidavit on Rs.10/- stamp paper stating the circumstances in which he/she lost the original certificate must be filed along with the application for the issue of the duplicate certificate.

**18. Complaints:**

Whenever complaints are received regarding the community claim of any employee/prospective employee/student claiming to belong to a Scheduled Caste/Scheduled Tribe or Backward Class, the appointing authority/employer/educational institution must refer the case only to the District Collector of the District from where the Competent Authority had issued the certificate. The District Collector shall in turn get it verified by the Scrutiny Committee constituted at the District level as per Rule – 8. The District Collector would inform the final action to the appointing authority/employer/educational institution within a period of 90 (ninety) days from the date of the receipt of the complaint by him/her from the appointing authority / employer / educational institution.

**Comments**

Issuance of the show-cause notice of cancellation without any inquiry suffers from jurisdictional errors. *J.Anuradha Vs. Government of Andhra Pradesh Social Welfare Department, 2000 (5) ALT 592.*

**19. Provisional admission / Appointment:**

If the last date for admission to an educational institution/ appointment to an office/post is getting expired and there is delay in finalizing the enquiry and issuing of Community, Nativity and Date of Birth certificate by the Competent

**Competent Authorities to issue Certificates:**

Government hereby notify that the authorities mentioned below in column (2) of the table within their territorial jurisdiction as “Competent Authorities” for issue of Community, Nativity and Date of Birth Certificate declaring the persons as belonging either to Scheduled Caste / Scheduled Tribe as per notification of the Government of India and to Backward Classes in accordance with the notification of the Government of Andhra Pradesh, issued from time to time.

	<b>Column 1 Specified Community</b>	<b>Column 2 Competent Authorities</b>	<b>Column 3 Jurisdiction</b>
01.	BC Group A/B/C/D. All communities referred by the Govt. of Andhra Pradesh belonging to Backward Class, A/B/C/D Groups.	All M.R.Os in the State not below the rank of a Dy. Tahsildar	Within the territorial jurisdiction of a Mandal
2	<b>Scheduled Caste</b> 1. Adi Andhra 2. Adi Dravida 3. Arundhatiya 4.Dom, Dombara, Paidi, Pano5. Madiga6. Mala7. Mala Dasari8. Mala Dasu9. Mala Sale, N e t k a n i 1 0 . M a n n e 1 1 . Panchama, Pariah12. Relli	All M.R.Os in the State not below the rank of a Dy. Tahsildar	Within the territorial jurisdiction of a Mandal
3	<b>Scheduled Caste:</b> 1. Anamuk 2. Aray Mala 3. Arwa Mala	All Revenue Officials not below the rank of a R.D.O./Sub-	Territorial jurisdiction of a Revenue Division held

	Column 1 Specified Community	Column 2 Competent Authorities	Column 3 Jurisdiction
	4. Bavuri 5. Beda Jangam, Budga Jangam. 6. Bindla 7. Byagara 8. Chachati 9. Chalavadi 10. Chamar, Mochi, Muchi 11. Chambhar 12. Chandala 13. Dakkal, Dokkalwar 14. Damdasi 15. Dhor 16. Ellamalawar, Yellammalawandlu 17. Ghasi, Haddi, Relli, Chachandi 18. Godagali 19. Godari 20. Gosangi 21. Holey a 22. Holey a Dasari 23. Jaggali 24. Jambuvulu 25. Kolupul vandlu 26. Madasi Kuruva, Madari Kurava 27. Madiga Dasu, Mashteen	Collector/ or Asst. Collec- tor in the State.	By R.D.O./ Sub- Collector/ Assistant Collector



	Column 1 Specified Community	Column 2 Competent Authorities	Column 3 Jurisdiction
	28. Mahar 29. Malan Hannai 30. Mala Jangam 31. Mala Masti 32. Mala Sanyasi 33. Mang 34. Mang Garodi 35. Mashti 36. Matangi 37. Mehtar 38. Mitha Ayyalvar 39. Mundala 40. Paky, Moti, Thoti 41. Pambada, Pambanda 42. Pamidi 43. Samagara 44. Samban 45. Sapru 46. Sindhollu, Chindollu		
4	<b>Scheduled Caste:</b> Bariki <b>Scheduled Tribe Community:</b> 1. Andh 2. Bagata 3. Bhil 4. Chenchu, Chenchwar 5. Gadabas 6. Gond, Naikpod, Rajgond	District Collector All M.R.O.s in the state not below the rank of Dy. Tahsildar	Within the territorial jurisdiction of a District Within the territorial jurisdiction of a Mandal

	Column 1 Specified Community	Column 2 Competent Authorities	Column 3 Jurisdiction
	7. Jatapus 8. Kattunayakan 9. Kolam, Mannervarlu 10. Kondhs, Kodi, Kodhu, Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs, Yenity Kondhs 11. Koya, Goud, Rajah, Rasha Koya, Lingadhari Koya (ordinary), Kottu koya, Bhine Koya, Rajkoya 12. Malis (excluding Adilabad, Hyderabad, Karimnagar, Khammam, Mahabubnagar, Medak, Nalgonda, Nizamabad and Warangal Districts) 13. Mukha Dhora, Nooka Dhora 14. Pardhan 15. Porja, Parangiporja 16. Rona, Rena 17. Savaras, Kapu Savaras, Maliya Savaras, Khutto Savaras 18. Sugalis, Lambadis 19. Kulia 20. Yenadis 21. Yerukulas		

	<b>Column 1 Specified Community</b>	<b>Column 2 Competent Authorities</b>	<b>Column 3 Jurisdiction</b>
<b>5.</b>	<b>Scheduled Tribe Community</b> 1. Konda Kapus 2. Konda Reddis 3. Hill Reddis 4. Goudu (in the Agency tracts) 5. Kammara State. 6. Kotia, Benth Oriya, Bartika, Dhulia, Dulia, Holva, Paiko, Putiya, Sanrona, Sidhopaiko 7. Reddi Dhoras 8. Konda Dhoras 9. Thoti (in Adilabad, Hyderabad, Karimnagar, Medak, Khammam, Mahabubnagar, Nalgonda, Nizamabad and Warangal Districts) 10. Nayaks (in the Agency tracts) 11. Valmiki (in the Agency tracts) Manne Dhora	All Revenue Officers not below the rank of a Dy.Tahsildar in the Scheduled Areas. All Revenue Officers not below the rank of R.D.O./Sub-Collector/Asst.Collector in the non-scheduled areas of the States	(a) Territorial jurisdiction of a Revenue Mandal held by the MRO in the Scheduled areas of the State.(b) territorial jurisdiction of a revenue division held by RDO/Sub-Collector/Asst. Collector in Non Scheduled areas of the State.

**3. Andhra Pradesh Scheduled Castes, Scheduled Tribes  
And Backward Class-Issue Of Community, Nativity  
And Date Of Birth Certificates Rules, 1997 –  
Amendment**

(G.O. M.s. No. 122, Social Welfare (J2), dated 1<sup>st</sup> September,  
1997 Published in A.P Gazette, RS to Part I, (Ext.),  
dated 6-9-1997)

Read the following:

1. G.O.Ms. No. 58, SW (12) Dept, dated 12-5-1997.
2. From CTW.AP, Hyderabad D.O. Rc No. 1089/97/TRI/  
VC-8, dated 28-6-1997 and 11-7-1997,
3. Govt. D.O.Lr. No. 17247/12/95, dated 10-7-1997.
4. From the CTW.A.P Hyderabad D.O. Rc.No. 1089/TRI/  
VC-8, dated 22-7-1997.

In the G.O. 1<sup>st</sup> read above rules were issued prescribing certain procedures etc., for the issuing of Community, Nativity and Date of Birth Certificates to the Scheduled Castes, Scheduled Tribes, and Backward Classes. The commissioner of Tribal Welfare in his reference 2<sup>nd</sup> and 4<sup>th</sup> read above, requested the Government to modify the rules to the extent of designating Mandal Revenue Officers as the Competent Authorities to issue Community Certificates to the 12 (twelve) tribes, as mentioned in Annexure 1 page 4 of the rules, for which the Revenue Divisional Officers have been notified under the rules as the Competent Authorities for the following reasons:

- (1) The Mandal Revenue Officers are more familiar with the customs and the traditions of the tribes;

(2) The tribals living in interior areas are facing more hardship to approach the Revenue Divisional Officer's for obtaining the Certificates:

The Commissioner Tribal Welfare has also reported that more bogus claims are received from non-Agency areas because in Agency areas, the authorities can easily identify the tribals and various associations of the tribals existing in Agency areas are also quick to react to any fraudulent certificates obtained by non-Agency areas that the false certificates remain mostly undetected. Therefore, Commissioner Tribal Welfare requested the Government to modify the rules accordingly by designating Mandal Revenue Officers as the competent Authorities to issue community certificates to the twelve tribes in Agency areas and the Revenue Divisional Officers in non-Agency areas.

The Government after careful consideration of the proposals of the Commissioner, Tribal Welfare, hereby order the following amendment to be issued to G.O. Ms. No 58, Social Welfare (J2), Department, dated 12-5-1997, published in Rules Supplement to Part I, extraordinary of the A.P Gazette No. 16, Hyderabad Friday, May 16, 1997.

#### AMENDMENTS

Annexure I Page 14 of G.O. Ms. No. 58, Social Welfare (J2) Dept., Dt. 12-5-1997.

	For		Read as
(1)	Column 2 "All Revenue Officers not below the rank of R.D.O/Sub-Collector/Asst. Collector in the State"	(1)(a)	All Mandal Revenue Officers not below the rank of the Deputy Tahsildar in the Scheduled Area of the State.

	For		Read as
		(b)	All Revenue Officers not below the rank of RDO/ Sub-Collector/ Asst. Collector in the non-Scheduled Areas of the State.
(2)	Column 3 "Territorial Jurisdiction of a Revenue Division held by RDO/Sub-Collector/Asst. Collector.	(a)	Territorial Jurisdiction of a Mandal Revenue Officers not below the rank of the Deputy Tahsildar in the Scheduled Area of the State.
		(b)	Territorial Jurisdiction of a Revenue Division held by RDO/Sub-Collector/ Asst. Collector

**4. FORMS**

**F O R M – I (Rule – 5)**

Form of Application for issue of Community, Nativity and Date of Birth certificate relating to Scheduled Tribe under Section 3(1) and 3(2) of the Act 16 of 1993

(Information to be furnished by the applicant himself supported by the documentary evidence)

To

The Mandal Revenue Officer /

Revenue Divisional Officer /

Sub-Collector/Asst. Collector

\_\_\_\_\_ Mandal/Division

\_\_\_\_\_ District

Sir,

I am in need of a Scheduled Tribe community certificate for me / for my son / daughter for which the details are given below:

1. Name of the applicant in full (in block letters):
2. Sex of the applicant:
3. a) Father's Name:  
b) Mother's Name:
4. Present postal address:
5. Place of permanent residence: of the certificate seeker / his father / paternal Grandfather as on the Date of the first notification Declaring the Community as a Scheduled Tribe, to which the Certificate seeker claims to belong

6. Age, date of birth and place of birth (if date is : not known approximate year of birth).
7. Place of ordinary residence (documents relating : to House/ land or other immovable property or Birth registration certificate or ration card or School records may be furnished)
8. If the applicant has been issued a community: Certificate in the past by any authority, a copy of such certificate should be furnished.
9. Community for which certificate is claimed: (Including sub-tribe or sub-group)
10. a) Community of the father: (Including sub-tribe or sub-group)  
b) Community of the mother: (Including sub-tribe or sub-group)
11. Whether the applicant is:  
a) a natural born son or daughter of his/her parents OR  
b) Adopted son/daughter of his/her parents

**DECLARATION**

I/We declare that the information furnished by me/us in the application is true and correct, and the documents appended thereto are genuine and the contents of the documents are true and correct and that if these are found to be untrue and incorrect, I/We will be liable for prosecution for furnishing false and incorrect information/ documents under Section 10 of the Act No.16 of 1993.

STATION:

Signature of the applicant

DATED:

Signature of the Parent / Guardian



**ACKNOWLEDGEMENT SLIP**

Received an application for issue of Community, Nativity and Date of Birth Certificates relating to Scheduled Tribe in Form I, from \_\_\_\_\_ (name of the applicant / parent / guardian) belonging to \_\_\_\_\_ village / town \_\_\_\_\_ Mandal, \_\_\_\_\_ District on \_\_\_\_\_ (date).

Name of the Office

Signature of the Officer authorised

Date:

by the Competent Authority

(Name in capital letters)

And designation (affix seal)

**FORM II**

**Form of Application for Issue of Community, Nativity and Date  
Of Birth Certificates Relating To Scheduled Caste / Backward  
Class Under Section 3 (1) Of Act 16 Of 1993**

(Information to be furnished by the applicant himself supported by  
documentary evidence)

\* \* \*

To  
The Mandal Revenue Officer /  
Revenue Divisional Officer /  
Sub-Collector/Asst. Collector /  
Dist. Collector

\_\_\_\_\_ Mandal/Division

\_\_\_\_\_ District

Sir,

I am in need of a Scheduled Caste / Backward Class community  
certificate for me / for my son / daughter for which the details are  
given below:

1. Name of the applicant in full (in block letters):
2. Sex of the applicant:
3. a) Father's Name:  
b) Mother's Name:
4. Present postal address:
5. Permanent Place of residence:
6. Age, date of birth and place of birth (If date is not known,  
approximate year of birth)
7. Place of ordinary residence (documents relating to House/land  
or other immovable property or birth registration certificate or  
ration card or school records may be furnished)

8. If the applicant has been issued a community: certificate in the past by any authority, a copy of such certificate should be furnished.
9. Community for which certificate is claimed: (including the sub-caste)
10. a) Caste (including sub-caste) of the father:  
b) Caste (including sub-caste) of the mother:
11. Religion professed by the applicant:
12. a) Religion professed by the father of the applicant  
b) Religion professed by the Mother of the applicant:
13. Whether the applicant is  
a) a natural born son or daughter of his/her parents  
OR  
b) adopted son/daughter of his/her parents :

**DECLARATION :**

I/We declare that the information furnished by me/us in the application is true and correct, and the documents appended thereto are genuine and the contents of the documents are true and correct and that if these are found to be untrue and incorrect, I/We will be liable for prosecution for furnishing false and incorrect information / documents under Section 10 of the Act No.16 of 1993.

STATION :

Signature of the applicant

DATED :

Signature of the Parent / Guardian

**ACKNOWLEDGEMENT SLIP**

Received an application for issue of Community, Nativity and Date of Birth Certificates relating to Scheduled Caste / Backward Class in Form II, from \_\_\_\_\_ (name of the applicant/parent/guardian) belonging to \_\_\_\_\_ village/town \_\_\_\_\_ mandal, \_\_\_\_\_ District on \_\_\_\_\_ (date).

Name of the Office

Signature of the Officer authorised

Date :

by the Competent Authority

(Name in capital letters)  
and designation (affix seal)

## FORM III

Serial No.  
 S.C. District Code:  
 S.T. Emblem Mandal Code:  
 B.C. Village Code:  
 Certificate No. :

**COMMUNITY, NATIVITY AND DATE OF BIRTH  
 CERTIFICATE**

- 1) This is to certify that Sri/Smt./Kum \_\_\_\_\_  
 Son /daughter of Sri \_\_\_\_\_ of Village /  
 Town \_\_\_\_\_ Mandal \_\_\_\_\_  
 District \_\_\_\_\_ of the State of Andhra  
 Pradesh belongs to \_\_\_\_\_ Community which is  
 recognized as S.C./ S.T. / B.C. under:  
 The Constitution (Scheduled Castes) Order, 1950  
 The Constitution (Scheduled Tribes) Order, 1950  
 G.O.Ms.No.1793 Education, dated 25-9-1970 as amended from  
 time to time (BCs),  
 S.Cs. S.Ts. list (Modification) Order, 1956, S.Cs and STs  
 (Amendment) Act, 1976.
- 2) It is certified that Sri / Smt./Kum \_\_\_\_\_ is  
 a native of \_\_\_\_\_ Village / Town  
 \_\_\_\_\_ Mandal \_\_\_\_\_ District of  
 Andhra Pradesh.
- 3) It is certified that the place of birth of Sri / Smt./Kum  
 \_\_\_\_\_ is \_\_\_\_\_  
 Village / Town \_\_\_\_\_ Mandal \_\_\_\_\_  
 District of Andhra Pradesh.

4) It is certified that the Date of Birth of Sri / Smt./Kum \_\_\_\_\_  
\_\_\_\_\_ is  
day \_\_\_\_\_ month \_\_\_\_\_  
year \_\_\_\_\_ (inwards) \_\_\_\_\_  
\_\_\_\_\_ as  
per the declaration given by his/her father/mother/guardian and as  
entered in the School records where he/she studied.

Signature

Name in Capital Letters:

Date :

(Seal) Designation

**Explanatory Note:** While mentioning the community, the Competent Authority must mention the sub-caste (in case of Scheduled Castes) and sub-tribe or sub-group (in case of Scheduled Tribes) as listed out in the S.Cs. and S.Ts. (Amendment) Act, 1976.

**FORM – IV**

**NOTICE TO THE APPLICANT**

To

Sri / Smt. / Kum \_\_\_\_\_ Village

\_\_\_\_\_ Mandal \_\_\_\_\_

District, whereas an application has been made by

\_\_\_\_\_ (name of the certificate seeker) S/

o, D/o, W/o. \_\_\_\_\_ (name of the father/

husband) for the issue of Community, Nativity and Date of Birth

Certificate under Section 3(I) / Sec.3 (2) of the AP (Scheduled

castes, Scheduled Tribes and BCs) Regulation of Issue of

Community Certificates Act, 1993. Notice is hereby given that an

enquiry will be made about the community claim of the above

mentioned

applicant by the undersigned at \_\_\_\_\_

(time) on \_\_\_\_\_ (date) of \_\_\_\_\_

(month) 19\_\_ (year) at \_\_\_\_\_ (place). He/She shall appear

without fail at the said place on the said date and said time to

substantiate his or her community claim, with oral and documentary

evidence, failing which the Competent Authority will confirm or

reject the community claim of the applicant based on the

documents/evidence furnished by the applicant in form I/II to the

Competent Authority and the material/evidence gathered by the

Competent Authority in this case. He/She may bring his/her parents

to assist him/her in the enquiry.

Place :

Signature and designation of

Date : (seal)

Competent Authority.

**FORM – V**

To

Sri/Smt./Kum. \_\_\_\_\_ village \_\_\_\_\_  
Mandal \_\_\_\_\_ District. Where as a reference has been  
received by the Scrutiny Committee from the Competent Authority  
(specify the authority) regarding doubts about your community  
claim that you belong to SC/ST/BC community. The Committee  
now therefore directs you to attend the enquiry regarding your  
community claim on \_\_\_\_\_ (date) at \_\_\_\_\_  
(time) at \_\_\_\_\_ (place) without fail. You are required to  
furnish all the documentary evidence in support of your community  
claim on the said date failing which the Scrutiny Committee will  
finalise its recommendations based on the material/documents/  
evidence made available to the Committee by the Competent  
Authority. You may bring your parents / guardian to assist you in  
the enquiry.

Date :

Place :

Chairman of the Scrutiny Committee

**(Joint Collector)**

**(Seal)**



**FORM – VI**

To

Sri/Smt/Kum. \_\_\_\_\_ Village \_\_\_\_\_  
 Mandal \_\_\_\_\_ District. Whereas a complaint has been  
 received by this office alleging that you have obtained ST/SC/BC  
 Community, Nativity and Date of Birth Certificate from  
 \_\_\_\_\_ (Specify the authority who issued it)  
 fraudulently, and whereas I have reason to believe that you obtained  
 S.T./S.C./B.C. certificate for yourself/for your son/daughter  
 fraudulently even though in reality you do not belong to any  
 Scheduled Tribe/SC/BC.

Now therefore,(Seal) Designation you are hereby directed to attend  
 enquiry regarding your community claim on \_\_\_\_\_  
 (date) at \_\_\_\_\_ (time) at \_\_\_\_\_ (place) without  
 fail. You are required to furnish all the documentary evidence in  
 support of your community claim on the said date failing which  
 the scrutiny Committee will finalise its recommendations based  
 on the material / documents / evidence made available to the  
 committee by the District Collector. You may bring your parents/  
 guardian to assist you in the enquiry.

Date :

Chairman of the Scrutiny Committee

Place :

**(Joint Collector)****(Seal)****S.RAY**

Principal Secretary to Government

**1. EXECUTIVE INSTRUCTIONS**  
**GOVERNMENT OF ANDHRA PRADESH**

**ABSTRACT**

Social Welfare Department–Community, Nativity and Date of Birth certificate issued by the competent authority in accordance with the A.P. SCs, STs and BCs- Issue of Community, Nativity and Date of Birth certificates Rules, 1997–Treated as permanent one — Orders – Issued.

**SOCIAL WELFARE (CV.1) DEPARTMENT**

**G.O.MS.No.26**

Dated: 04.05.2015

**Read the following:-**

- (1) G.O. Ms. No. 58, Social Welfare (J) Dept., dt; 12-05-1997
- (2) E-Memo No. 14355/SWD/CV/2002-2, Social Welfare (CV) Dept., dt: 8.4.2004
- (3) Letter Lr.Rc.No.G3/451/2015, Dated: 20.03.2015 from the Director of Social Welfare. A.P., Hyderabad.

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**ORDER:**

In the G.O. 1<sup>st</sup> read above, orders were issued regarding issue of Community Nativity and Date of Birth Certificate to Scheduled Castes/ Scheduled Tribes/ Backward Classes.

2. As per Rule 16 of the said GO, the Community, Nativity and Date of Birth Certificate issued by the Competent

Authority shall be a permanent one. The same has been reiterated in the reference 2<sup>nd</sup> read above and all the departments and agencies concerned have been requested to verify the original Integrated Community, Nativity and Date of Birth Certificates and return the same to the concerned people by retaining the attested copies for their record purpose while making an entry accordingly on the attested copy. This was meant for avoiding of forcing the people to obtain fresh Integrated Community, Nativity and Date of Birth Certificates from Competent Authorities repeatedly.

3. In the reference 3<sup>rd</sup> read above, the DSW, A. P., Hyderabad has brought to the notice of the Government that several problems are being faced by the public with regard to obtaining Integrated Community Certificates.
4. Government, after careful consideration of the matter and in order to overcome the hardship being faced by the ST/ST/BC Communities, hereby orders as under:
  - A. Admission to Social Welfare Hostels. Residential Schools of all Departments:
    - i. Application may be accepted with self - Certification for Caste.
    - ii. Aadhar number of child and both parents, in addition to other details that are normally obtained in the application form should suffice.
    - iii. No other certificate shall be insisted upon.
    - iv. In case of any question about the self-certification of caste, the Commissioner, Social Welfare may address Collector to cause verification.

- B. School & College Admissions. Post Metric Scholarships & Fee Reimbursement
- i. A copy of the integrated caste certificate may be obtained at the time of applying. The same may be verified in the Meeseva /ISES Database. In case of Pre- Meeseva certificates, verification may be done on production of the original by the applicant.
  - ii. The original shall be used only for verification and shall be returned on the same day and shall not be kept with the Institution/Department under any circumstances.
  - iii. In case of any doubt about the certificate, the Department may address Collector for ratification/verification.
  - iv. Verification of Integrated certificate is to be done only once during the course of study
  - v. A letter shall be sent to the Student as well as Parents, under the signature of Hon'ble Chief Minister at the time of first grant of scholarship as well as at the time of renewal of scholarship.
  - vi. Since Caste has already been verified at the time of admission to Colleges, further certification of caste shall not be insisted upon at the time of Grant of scholarships.
  - vii. No verification is needed for renewal of post-metric scholarships/fee reimbursement.
- C. Jobs of State Government / State Organizations / State Public Sector Units
- i. None of the State Government organizations/Departments/ State PSUs shall prescribe any format for obtaining caste status of applicants. They shall accept the copies of Permanent Integrated certificates issued by Tahsildars through Meeseva.

- ii. The same may be verified in the Meeseva /ISES Database. In case of certificates not issued through Meeseva, verification may be done on production of the original by the applicant.
- iii. The original shall be returned on the same day and shall not be kept with the Institution / Department / PSU under any circumstances.
- iv. In case of any question about the caste of the selected applicant, the employer may address Collector for verification.
- D. While applying for jobs of central government and its organizations, fresh print of already issued certificate may be given at Meeseva, based on data already available in Meeseva / ISES database.
- E. Furnishing of integrated certificate for every instance may be avoided by incorporating the permanency clause in certificate itself by suitably modifying the existing format of the certificate.
- F. All kinds of certificates issued from Meeseva may be linked with Aadhar to avoid duplication and easy and hassle free reference to the applicant and requisitioning dept.
- 5. These orders shall come into force with immediate effect. All the District Collectors, departments and agencies concerned shall take action in the matter accordingly.

**DR VIJAYKUMAR**  
**PRINCIPAL SECRETARY TO GOVERNMENT**

**(BY ORDER AND IN THE NAME OF THE GOVERNOR  
OF ANDHRA PRADESH)**

**GOVERNMENT OF ANDHRA PRADESH**

Tribal Welfare Department – Issue of caste and community certificates – Officials competent to issue such certificates-  
Certain guidelines – Issued.

**SOCIAL WELFARE (E) DEPARTMENT**

**G. O. Ms. No. 245**

**Dated 30<sup>th</sup> June, 1977,**

Read the following:-

- 1) G.O. Ms. No. 147, Social Welfare, Dt. 27-4-1977
- 2) From the Director of Tribal Welfare, Lr. Rc. No. 15726/76/H3, dt. 6-6-1977.

\*\*\*\*\*

**ORDER :**

1. In the G.O. read above, orders were issued to the effect that the caste / community certificates in respect of Scheduled Tribes mentioned therein should be issued by a Revenue Officer not below the rank of Tahsildar or Revenue Divisional Officer/Assistant Collector/Sub-Collector of the Taluk/ Division/District in respect of which the particulars Scheduled Tribe candidate claims nativity.
2. In Continuation of the orders issued in G.O. first read above, Government hereby approve the guidelines appended to this order authorizing the officers and others to identify tribal candidates for issue of caste/community certificates for the purpose of availing scholarships and educational concession etc., to the students belonging to Scheduled Tribes.
3. All the certifying authorities in the state are requested to act upon and scrupulously follow these guidelines while issuing caste/community certificates to the students belonging to Scheduled Tribes.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR  
OF ANDHRA PRADESH)**

**S.R. Sankaran,**

**Secretary to**

**Government.**

**GUIDELINES FOR OFFICIALS AND OTHERS TO  
IDENTIFY TRIBAL CANDIDATES FOR PURPOSE OF  
ISSUE OF COMMUNITY CERTIFICATES.**

1. This letter is prepared with the sole purpose of appraising the Administration to take necessary precautions in issue of community certificates to tribal candidates. A few important factors which should be ascertained prior to issue of certificates are discussed hereunder. A separate questionnaire for ascertaining the genuineness of the candidate is appended and a chart indicating briefly the characteristics of each tribal group is also appended for guidance.
2. Every year numerous applications are received from spurious candidates claiming concessions, protections and privileges exclusively provided to Scheduled Tribe candidates with the help of false certificates resulting in not only dilution but also denial of benefits to genuine Scheduled Tribe candidates. The number of these spurious applications is assuming alarming proportions with the passage of time as the wide publicity given to concessions available to Scheduled Tribes is sometimes prompting certain selfish non-scheduled Tribes and sometimes prompting certain selfish non-scheduled communities to take advantage of the fact that either in the constitution or in the presidential order (1950) the phrase "Scheduled Tribes" is neither clearly defined nor criteria evolved for declaring certain groups as Scheduled. While the word "Tribe" has so far eluded a definition of universal application from anthropologists the adding of the further complicated the concept however genuine may be the intentions of these authorities in affording protection to certain weaker sections of the society.

3. The vagueness of the concept of the Scheduled Tribe can be grasped from the definition given in the constitution According to the constitution; Scheduled tribes are such tribes or tribal communities or parts thereof or groups with such tribes of tribal communities which are deemed under Article 342 to be Scheduled Tribes for the purpose of the constitution. The same vagueness haunts the article 342 which runs as follows:
  - 1) “The President may with respect to any State (or Union Territory) and where it is a State after consultation with the Governor by Public Notification specify the tribes or tribal communities which shall for the purpose of this consultation be deemed to be Scheduled Tribes in relation to that state (or Union Territory as case may be)”
  - 2) “Parliament may by law include in or exclude from the list of Scheduled Tribes specified in notification issued under clause (1) any tribe or tribal community, but save as be varied by any subsequent notification.
  - 3) Even the Joint Parliament Committee which was constituted to probe into the question of including certain fresh tribal communities or excluding detribalized groups in or from Scheduled Tribes list could not come with criteria of Universal application for declaring any community as a Scheduled Tribes. The Committee followed the following five criteria as the determinants of Scheduled Tribes.
    - 1). Primitive Tribes, 2) District Culture 3) Extreme Backwardness, 4) Geographical isolation and 5) Shyness of contact. If these five criteria are strictly applied to all the Plains living Scheduled Tribes like Yanadis and Yerukula will have to be automatically dropped from the list of Scheduled Tribes as they do not satisfy the last two criteria even though



they are as much backward and possess primitive traits and distinct cultures as the tribals living in remote areas. Even certain Scheduled Tribes inhabiting the hilly and forest areas are to be de-scheduled in view of the achievements in providing communication and transport facilities to the higher to inaccessible areas during the past two decades of planned development breaking their age old isolation and bringing them into close contact with the advanced brethren of the plains. The existence of synonymous community names and common occupational groups among Scheduled tribes and non-scheduled groups further complicated the process of identification of genuine Scheduled Tribes from the fictitious one.

- 4) Taking advantage of this fluid situation several non-Scheduled candidates are deriving the benefits of reservations at the cost of genuine Scheduled Tribes candidates, For example, much confusion prevails in the issue of community certificates restricted to genuine Konda Reddy, Konda Kapu, Kammara and Thoti Scheduled Tribe candidates as the Non-Scheduled Tribes Plains living advanced caste groups like Reddy, Kapu, Kammara etc., are taking advantage of Possessing common generic caste name without any ethnic or cultural homogeneity with the respective Scheduled Tribes.
- 5) The Konda Kapu and the Konda Reddy are distinct groups entirely different from the plains living Kapus and Reddis without any similarities in their habitation, cultural commensally social and economic patterns. The Konda Kapus in habitation the forest and mountains tracts and subsist on shifting cultivation and gathering Minor Forest produce. The Konda Kapu also calls themselves as Konda Doras assuming that they are lords of hills. The Tribe is divided into a number

of exogamated totemic clans such as Korra (Sun) Kimudi (Bear), Ventalu(Snake) etc., which are further divided into a number of steps or the surnames of the Konda Kapus are not found in their social system. The plains Kapus are also known as Telagas, Naidus, Munnur Kapu, Baliya etc., in different parts of the State and all these are only synonymous terms indicating the same groups i.e., Kapu, Konda Kapus follow the levirate type of Marriages by which the younger brother in-herits the widow of his deceased elder brother. Marriage by capture and Marriage by mutual elopement and marriage by service are socially accepted ways of acquiring mates among Konda Kapus. These primitive marriage patterns are totally absent and even the wastages of the institution could not be traced among the plains Kapu community divorced and widow remarriage are socially allowed among Konda Kapus whereas the plain Kapus do not customarily allow divorce and widow remarriage. Another chief difference between plains Kapus and Konda Kapus is the beef eating is taboo among the former whereas the latter community takes it without social inhibitions. Similarly the Konda Reddis who are living chiefly in the Scheduled areas of East, West Godavari and Khammam districts are quite different from the Reddis living in the plain areas of Andhra Pradesh. Among the plains Reddy Community there are a number of endogamous divisions such as Panta, Pakanati, Mudum, Podakanti, Yalanati Murki, Desaru, Pokanati etc., and these divisions are further sub-divided into exogamous septs or surnames. Among Konda Reddis all these endogamous divisions are totally absent. They regulate their matrimonial alliances on the basis of surname Marriage by capture, mutual love and elopement and marriage by service are socially accepted ways of acquiring mates are socially prohibited in

the Plains Reddis, Further, icvirate type of marriages, divorce, widow marriages are also customarily practiced in the former community and the same practices are customarily tabooed in the latter community. Konda Reddis are experts in manufacturing baskets and winnowing fans and most of them living on hill slopes practice shifting cultivation. All these occupational pursuits are totally absent among Reddis living in Plain areas. The most significant difference is that while Konda Reddis eat pork and domesticate pigs, both eating of pork and domestication of pig is totally prohibited among Reddis of the Plain areas Prof Haimendorf in his book 'Reddis of Bison Hills' clearly brought out the difference between Konda Reddis and Plain Reddis. "Within the Hindu Castes of Reddis there are numerous Sub-Sections such as Panta Reddis, Hill Reddis, Bhumanchi Reddis, Matad Reddis and Pakant Reddis but none of these stands in any close contact with the Konda Reddis, who form a strictly endogamous and a distinct cultivated unit.

- 6) In the same manner, ethnically and culturally the Kammaras living in the plain areas are quite different from the Kammaras living in the Scheduled areas despite their similar traditional occupants. The former's main occupation is Black smithy but they never work in the agricultural fields where is for the latter community agriculture has become the subsidiary occupation. For the Kammaras of Scheduled areas their way of life and cultural practices are almost similar to that of other tribal groups. The social organization of Kammaras of the Scheduled Areas of West Godavari, East Godavari, Visakhapatnam, and Srikakulam districts is quite distinct from that of the social organization of Kammaras living in the plain areas of Andhra Pradesh and there are neither matrimonial

alliances nor any other relationship between these two groups. The farmer is divided into a number of clans such as 'Korra'(Sun) Bhallu (Bear) 'Bhaa'(Tiger,'Gang' water)'Hanuman'(Monkey) and these clan names are quite skin to the clan names of other Scheduled tribes living in the Scheduled Areas. But this clan organization is not found in the social organization of Kamars living in the plain areas. The Kamaras of Scheduled Areas practice Marriage by capture and levirate where as these types of Marriage are strictly prohibited in the Plains Kammaras. Divorce and widow remarriages are socially allowed in the Latter where as the former community do not customarily allow either divorce or widow remarriage. The Kammaras of Plain areas are mostly vegetarian and they wear sacred thread but Kammaras of Scheduled Areas are beef eaters and they do not put on sacred thread. The Kammaras who are living in Scheduled Areas only are considered as Scheduled tribes.

- 7) Thotis who are included in the list of Scheduled Tribes from Adilabad district are quite different from that of Thotis of plain Areas who are working as village servants or scavengers. Thoti or Thotis are predominately found in the Scheduled areas of Adilabad district. They are hereditary their social cultural life they claim greater association with Raj Gonds. The women folk are experts in tattooing they worship Gods of Raj Gonds and observe the same social customs. The thoti social organization is also similar to the social organization of Raj Gonds with characteristic fourfold phratry organization. Thotis who are found in Adilabad, and Karimnagar districts are quite different from the Thotis of Andhra areas. Generally each village will have one Thoti (Village Servant). He attends to digging of graves, cremation of dead bodies, cleaning of

choultries and other grue some duties which are assigned by village headman. The speak Telugu in Andhra Area. The term Thoti is only an occupational term given to either Malas or Madigs or Reddis who work is village servants in Andhra Areas. These Thotis who are working as village servants in Andhra Area are quite different from the Thoti tribe predominantly found in Scheduled areas of Adilabad Districts. Further some of the Muslims who are working as Scavengers (Methars) are also claiming as Thotis and producing false certificates as Scheduled Tribes. The Muslims Metharas speak Urdu and they too are quite distinct from the Thotis found in Adilabad District. Again the Muslim Methars and Thoties of Andhra region are not at all related as they belong to distinct religious faiths.

- 8) If any community which is not declared as Scheduled Tribe bears similar community name of any of the Scheduled Tribes, and claims as Scheduled Tribe, the ethnic and culture similarities have to be established in order to establish whether that particular in the social structure, marriage, patterns, marital relations, traditional customs, place of habitation, linguistic affinity, food habits and livelihood patterns of the two communities have to be analyzed in order to determine whether the community under question comes under Scheduled tribes or not.
- 9) There is also much confusion with regard to Scheduled Tribes who are converted to Christianity. In case of Scheduled Castes a person belonging to a Scheduled caste cases to be so if he adopts the Buddhism or any other religion expert Hindu or Sikh religion. But unlike Scheduled Caste the rights of a person belonging to a Scheduled Tribes are independent of his/her religious faith as per the instructions of Government of India, Ministry of Home Affairs, Memo No. 1/2/61 SC K (i), Dated:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

**Caste/Community Certificates- Procedure in regard to issue of caste Certificates in respect of S.Cs. S. Ts. and B.Cs. - Comprehensive instructions-issued.**

**SOCIAL WELFARE (J2) DEPARTMENT**

**G.O.Ms. No. 289.**

**DATED: 28-11-1986.**

Read the Following:-

1. G.O. Ms. No. 164, F. & S.W (SC & T CELL) Department, dated: 15-9-1973.
2. G.O. Ms. No. 880 E. & S.W. (E) Department, dt. 17-10-1973.
3. Memo No. 373/E1/879-1 S.W.(E) Department, dt. 15-3-1976.
4. G.O. Ms. No. 147 S.W. (E) Department, dt. 27-4-1977.
5. Memo No. 578/J1/84-10 S.W. (J) Department, dt.28-8-1985.
6. G. O. Ms. No. 250 S.W., Department, dt. 21-11-1985.
7. G. O. Ms. No. 262 Social Welfare (J2) Department, dt. 10-12-1985
8. G. O. Ms. No. 122 Social Welfare (J1) Department, dt. 6-6-1986.

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**ORDER:**

It has been the endeavor of the State Government not only to protect the rights extended to S.Cs/S.Ts under the constitution, but also to ensure that the rights and benefits meant for S.Cs/ S.Ts/B.Cs such as admissions in to educational institutions and

employment in Government and Quasi- Government institutions are not usurped by others through false/bogus caste certificates.

2. Complaints are often being received that a number of persons not belonging to S.C/S.T/B.C. communities have secured appointment in Government Department, Corporations, Banks etc, by producing false caste certificates. Similarly in respect of admissions into educational institutions include the professional colleges such as Medical, Engineering etc., it has been observed that seats reserved for S.Cs/S.Ts and B.Cs are being usurped by students not belonging to these communities by producing false certificates. To combat this problem. State Government as well as Central Government has issued of Caste/Community certificates to S.Cs. S.Ts., and B.Cs, yet with the increasing tempo of development progress concomitant expansion in the avenues of education and employment, the incidence of bogus community certificates has been causing concern.

A Special Committee was, therefore, constituted by the State Government to make an in depth study of the problem of bogus Caste Certificates and suggest measures for prevention of such false caste certificates. The Committee has made its recommendations to the Government in this regard, having regard to the recommendations of the Committed and in continuation of the instructions issued in the G.O S read above; the following further instructions are issued by the Government.

**FORM OF APPLICATION:**

The application for issue of Caste Certificates should normally be in the form as in Annexure I. However, the form need not be insisted upon in all cases: any request for Caste Certificates will be attended to and the form could be filled up by the Certifying authorities or Enquiry Officers themselves.

**AUTHORITY COMPETENT TO ISSUE CERTIFICATE:**

- i) As laid down in G.O Ms. No. 880 E & Social Welfare Department, dated: 17<sup>th</sup> October, 1975 and G.O. Ms. No. 262 Social Welfare Department dated: 10<sup>th</sup> December, 1985, all Gazetted Officers, of State Government and Mandal Revenue Officers, irrespective of their cadre, Shall be competent to issue certificates in favour of S.Cs and B.C s for the purpose of appointment to services, admission into educational institutions, Scholarships and other concessions to which these communities are eligible unless otherwise specifically provided.
- ii) As laid down in G.O Ms. No. 122 Social Welfare Department, dated: 6-6-1986, in respect of Scheduled Castes listed below, only a Revenue Officer not below the rank of R.D.O./ Sub-Collector, in whose jurisdiction the native place of the applicant is situated is competent to issue the Caste certificates
1. Anamuk
  2. Aray Mala
  3. Arwa Mala
  4. Bavuri
  5. Beda (Budge),Jangam.
  6. Bindla
  7. Byagara
  8. Chachati
  9. Chalavadi
  10. Chamar, Mochi,Muchi
  11. Chamber



12. Chandala
13. Dakkal, Dokkalwar
14. Dandasi
15. Dhor
16. Ellamalawar, Ellamalavandulu
17. Chasi, Hdndi, Relli
18. Godagali
19. Godari
20. Gosangi
21. Holeya
22. Holya Dasari
23. Jaggali
24. Jambavlulu
25. Kolupulavandlu
26. Madasi Kurua, Madari Kuruva
27. Madiga Dasu, Mashteen
28. Mahar
29. Malahannai
30. Malajangam
31. Mala Mashti
32. Mala Sanyasi
33. Mang
34. Mang Gorodi

35. Mashti
  36. Matanai
  37. Mehtar
  38. Mitha Ayyalwar
  39. Mundala
  40. Paky, Moti, Thoti
  41. Pambada, Pambanda
  42. Pamidi
  43. Samagar
  44. Samban
  45. Sarapu
  46. Chindolu.
- iii. As prescribed in G.O. Ms. No. 147 Social Welfare Department, dated: 27<sup>th</sup> April, 1977, in respect of Scheduled Tribes listed below, only a Revenue Officer not below the rank of Mandal Revenue officer or Revenue Divisional officer/Assistant Collector/Sub-Collector of the Taluk/Division District in whose jurisdiction Scheduled Tribe candidate claims natively is empowered to issue caste certificate.
1. Konda Kapus
  2. Konda Reddies
  3. Hill Reddies
  4. Goudu or Goud
  5. Kommara,

6. Kotia, Benthoriya, Bartika, Dhulia or Dulia, Holva Paiko, Potia, Sanroha Sidho-Paiko,
  7. Malis
  8. Reddy Doras
  9. Konda Doras
  10. Thoti
  11. Nayaka
  12. Valmiki
  13. Manne Dora
- iv. As indicated in G.O. Ms.No. 250 Social welfare Department, dated; 21<sup>st</sup> November, 1985, in respect of 'Barliki' community against item No. 4 of the List of Scheduled Castes, the Caste certificates should be given by the District Collector and not by any other officer below that rank.

**PROCEDURE TO BE FOLLOWED BY CERTIFYING**

**OFFICER:-**

The certifying officer should cause necessary enquiries in the concerned Village / Villages to verify the veracity of the information and genuineness of the claim and Documents furnished by the applicant. The certifying officer must examine the claim of the applicant in the light of the information furnished by the applicant and the documentary evidence produced by him in accordance with the check-list (Annexure-II).

**FORM OF CASTE CERTIFICATES:**

The Caste certificate to be issued by the certifying authority should be in the form appended as in annexure III to this order.

**POINTS GOVERNING THE ISSUE OF SCHEDULED CASTES AND TRIBES AND BACKWARD CLASSES CERTIFICATES:-**

There a person claims to belong to a S.C or a S.T or B.C, it should be verified:-

- a. That the person and his parents actually belong to the community claimed;
- b. That this community is included in the President order specifying the S.C., S.T in relation to the concerned State;
- c. That the person belongs to that State and to the area within that State in respect of which the community has been scheduled.
- d. If the person claims to be a S.C., he should profess either the Hindu of the Sikh religion;
- e. If the person claims to be a S.T., he may profess any religion.

**MAINTENANCE OF RECORDS:**

1. The caste certificate shall be permanent record in the certificate issuing authority. The certificate issuing authority shall maintain registers for S.Cs. S.Ts and B.Cs Separately, wherein all the particulars of the caste certificates issued by him are recorded.
2. The register of caste Certificate maintained in the office of the certificate issuing authority should be open for inspection.

**PROCEDURE FOR VERIFICATION IN CASE OF ADMISSION INTO PROFESSIONAL COLLEGES:-**

In the matter of admission of S.C., S.T., and B.C., into professional courses, the Head of the institution shall have a pre-admission scrutiny of application of the candidates belonging to above communities, taking assistants of an officer from office of the Director of Social Welfare / Director of Tribal Welfare/Director of Backward Classes welfare as the case may be, to ensure that

no reserved seat is cornered by persons belonging to other communities by producing false caste certificates.

All the certificates issuing authority should ensure that the procedure specified above is scrupulously adhered to

**ACTION TO BE TAKEN AGAINST THE CANDIDATES WHO PRODUCED FALSE CASTE CERTIFICATES.**

As already laid down in G.O. Ms.No. 164 E and Social Welfare (SC & ST cell) Department, dated: 15<sup>th</sup> September, 1973 any candidate who secures appointment by producing false certificate claiming himself to be belonging to a community for who posts have been specially reserved will be committing an offence punishable under section 182 of I.P.C. Similarly where an applicant obtains on the strength of a false certificate, appointment to posts reserved for S.Cs S.Ts and B.Cs he will be punishable under section 420 I.P.C. also. In view of this Government consider that in all such cases where enquiries reveal that candidate have produced false certificate and secured employment reserved for S.Cs S.Ts and B.Cs prosecution should be launched invariably for offences punishable under section 182 and / or 420 I.P.C.

Such candidates should immediately be placed under suspension, pending completion of prosecution. Departmental action should also be taken against the candidates. In all such cases, when proved, punishment of dismissal from service should be imposed.

**ACTION AGAINST OFFICERS WHO ISSUE FALSE CASTE CERTIFICATES:**

As laid down in Memo No. 373/E1/76-1, dated; 15-3-1976 of Employment and Social Welfare (E) Department, if any officer issues a false certificate he will be liable for stern disciplinary action under Andhra Pradesh Civil Services (CCA) Rules. In cases where false certificates are found to have been issued deliberately with malafide intention, he will be liable for even dismissal from service.

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

**Extention of the benefits available for Scheduled Castes,  
Scheduled Tribes and Backward Classes to the Children of  
inter-caste marriages Orders-Issued.**

**EMPLOYEMENT & SOCIAL WELFARE (B2) DEPARTMENT**

**G.O.Ms.No.371**

Dated the 13<sup>th</sup> April, 1976.

Read the following:

1. G. O. Ms. No. 546, E & SW. dated 15<sup>th</sup> July 1974,
2. G. O. Ms. No. 583, E & SW. dated 24<sup>th</sup> July 1974,
3. G. O. Ms. No. 632, E & SW. dated 19<sup>th</sup> August 1974,
4. G. O. Ms. No. 496, E & SW. dated 21<sup>st</sup> June 1975.

**ORDER:**

The Government has issued orders in the G.Os. Read above sanctioning certain incentives and non-statutory educational concessions like scholarships, hostel facilities, fee concessions etc., to the children born of inter-caste marriages on the basis of the caste of either parent. The question whether statutory concessions like reservations in services and educational institutions may be extended to the children of the inter-caste married couples has been examined by the Government. No statutory concessions can be given to the children of the inter-caste married couples as such. But where either parent belongs to Scheduled Castes, Scheduled Tribes or Backward Classes and if the child can be declared as belonging to the caste of either parent they will be eligible for the concessions allowed to the persons of that caste. The guidelines for determining the caste of the child of inter-caste married couples are laid down by the Govt. of India in their letter No. 39/37/73-SCT, I

Ministry of Home Affairs, dated 4<sup>th</sup> March 1975, a copy of which is appended. It is necessary to examine each case with reference to these guidelines, and where a child of inter-caste marriage can be treated as belonging to Scheduled Caste, Scheduled Tribe or Backward Class in accordance with those guidelines, the child is eligible for reservations in services etc., allowed for that caste.

2. For the purpose of admissions into educational institutions and professional colleges, however, the Government direct the lower caste of either parent in the inter-caste marriage shall be deemed to be the caste of the child and it shall be eligible for the reservation of the seats made for that caste.
3. All Heads of Departments and Collectors are requested to bring the above instructions to the notice of all concerned.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF  
ANDHRA PRADESH)**

**DILSUKHRAM,**  
*Secretary to Government*

**APPENDIX**

Copy of Lr. No. 39/37/1973-SCT.I, dated 4<sup>th</sup> March, 1975 from the Government of India, Ministry of Home Affairs, New Delhi addressed to All State Governments.

Sub: Status of the children belonging to the couple one of whom belongs to Scheduled Castes/ Scheduled Tribes.

Sir,

I am directed to say that the question of the status of the children belonging to parents one of whom is a member of the Scheduled Caste or Scheduled Tribe community has been examined by this Ministry. Two notes (Annexure I and II) explaining the legal position in this regard are sent herewith for information and guidance of the State Government / UTD.

Yours faithfully,

Sd. /...

Under Secretary to the Govt. of India.



**True copy****ANNEXURE-I**

*Legal views on the status of the children belonging to the parents one of whom is a member of Schedule Caste:*

1. The general position of law as to that effect of marriage between parties who are Hindus and one of whom belongs to the Scheduled Castes is the Under the ancient Hindu law, generally, inter-caste marriage was looked down upon by the propounders and commentators. Some of the authorities however reluctantly permitted marriage between a male caste Hindu with a Shudra female and included it in the list of Anuloma marriages although it was stated that in the wedding with a Shudra Wife, the ceremony should be performed without Mantras. The children born out of a marriage by a caste Hindu with a woman of an inferior caste had neither the caste of the father nor the status of his Savarn Aurasas-meaning the son born of a caste Hindu wife. They were termed as Anulomaja and belonged to an intermediate caste higher than that of their mother and lower than that of their father. Yajnavalkya omits the son of Brahmin by a Shudra wife from the list of sons mentioned by Manu. Pratiloma marriages, i.e., marriages between women of a superior caste with a man of an inferior caste, were altogether forbidden and no rites were prescribed for them in Grihya Sutra and persons entering into such marriages were degraded from the caste.
2. After the passing of the various statutory enactments relating to the Hindu law, such as, the Hindu Marriages Act, 1955 the Hindu Succession Act, 1956 and the Hindu Minority and

Guardianship Act, 1956, customary ban on inter-caste marriages in either way, has been lifted by the statutory enactments. Under the Hindu Marriage Act, any two Hindus of different sex, irrespective of their caste may enter into a valid marriage unless such marriage is prohibited by the Statute itself. According to the above three Statutes, all children either legitimate, or illegitimate, one of whose parents is a Hindu-Budhist, Jain or a Sikh by religion and who are brought up as members of the tribe, community, group or family to which their parents belong or belonged, are to be treated as Hindus. In view of the above, the off-springs of marriage between the caste Hindu and a member of the Scheduled Caste community, are Hindus and like the off-springs of marriage in the same caste, are entitled to succeed to the properties of their parents. But the question arises as to whether such a child will acquire the status of his or her parent belonging to the higher caste or to that of the parent belonging to the higher caste or to that of the parent belonging to the Scheduled Caste. On this point, we have not come across any direct case law. But we feel that the ratio of the decision in *Wilson Read Vs. C. S. Boot* reported in AIR 1958 Assam, 128, would apply to such cases. It is stated at page 132.

“The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he was treated by the community and the practice amongst the tribal people in the matter of dealing with persons whose mother was a Khasi and father was a European”.

Similarly, in the case of *Muthusamy Mudaliar Vs. Masilmam Mudaliar*, reported in ILR 33 Madras, 342, the Court held-

“It is not uncommon process for a class or tribe outside the pale of caste to another pale and if other communities recognized their claim, they are treated as of that class or caste. The process of adoption into the Hindu hierarchy through caste is common both in the North and in the South India. As we have already pointed out in the past there have been cases where people, who judge from the purity of blood could not be Khasis, were taken into their fold or the orthodoxy did not stand in the way of their assimilation into the Khasi community”.

3. The Supreme Court in *V. V. Giri Vs. D. S. Dora*, reported in AIR 1959 SC 1318 (1327) held- ....”The caste status of a person in the context would necessarily have to be determined in the light of therecognition received by him from the members of the caste into which he seeks an entry. There is no evidence on this point at all... Besides the evidence produced by the appellant merely shows some acts by respondent which no doubt were intended to assert a higher status; but unilateral acts of thischaracter cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken andin our opinion the High Court is absolutely right “.

In view of the above observations by Superior Courts, it can safely be concluded that the crucial test to determine is whether a child born out of such a wedlock has been

accepted by the Scheduled Caste community as a member of their community and has been brought up in that surrounding and in that community or not. The nexus between the child and the community or class or caste is a real test irrespective of the fact whether the accommodating class or caste or community is Scheduled Caste community or a caste Hindu community. Even if the mother of the child is a member of the Scheduled Caste community, it is possible that the child is accepted by the community of his father and brought up in the surroundings of his father's relations. In that case, such a child cannot be treated as a member of the Scheduled Caste community and cannot get any benefits as such. Similarly when the mother belongs to a higher caste and the father is a Scheduled Caste, the father may remain away from the Scheduled Caste community and the child may be brought up in a different surrounding under the influence of his mother's relations and her community members. In such cases, also, the child cannot be said to be a member of the Scheduled Caste community. In the alternative, where the child irrespective of the fact whether the father or the mother is a member of Scheduled Caste community, is brought up in the Scheduled Caste community as a member of such community, then he has to be treated as a member of the Scheduled Caste community and would be entitled to receive benefits as such.

4. As regards the marriages not registered and marriages not legally valid, it may be pointed out that registration is not mandatory for marriages under the Hindu law, Even under the Hindu Marriages Act, 1955, registration under

Section 6 is optional and sub-section (5) provides that the validity of any Hindu marriages shall, in no way, be affected by the omission to make entry in the Marriages Register maintained under this Section. Section 7 provides that Hindu marriage may be solemnized in accordance with the customary rites and the ceremonies of either party there to and, if such ceremony includes the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. In view thereof, all those marriages though not registered but which have been solemnized in accordance with the procedure mentioned in this section are to be treated as valid marriages and our opinion mentioned in para 3 above will apply to the children born out of such valid but undersigned marriages.

5. As regards marriages which are not legally valid, it is clear that such children are illegitimate unless in validity of marriage is due to grant of a decree of nullity by a Court in which case, provision of Section 16 of the Hindu Marriage Act, 1955, will apply. Under Section 6 (b) of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor has been stated to be—

“In case of an illegitimate boy or an illegitimate girl the mother and after her the father”.

6. It can be derived from this that the illegitimate children are generally brought up by the mother and in her own surroundings. Therefore if the mother belongs to the Scheduled Caste and brings up the child within a Scheduled Caste community, the child can be taken as a member of the Scheduled Caste community But in this case also the

major factor for consideration is whether the child has been accepted by the Scheduled Caste community as a member of their community and he has been brought up as such

7. The above the general observations, however each case has to be examined in the light of the circumstances prevalent in that case and final decision has to be taken thereon.

#### **ANNEXURE-II**

*Legal views on the status of the off-springs born out of wedlock between a couple one of whom is a member of Scheduled Tribe Community:*

The question has arisen whether the off-spring born out of wedlock between a couple one of whom is a member of Scheduled Tribe and other is not, should be treated as a Scheduled Tribe or not.

2. It may be stated at the outset that unlike members of Scheduled Castes the members of Scheduled Tribes continue as such even after their conversion to other religion. This is because while constitution (Scheduled Castes) Order, 1950 provides in clause 3 that only a member of Hindu or Sikh religion shall be deemed to be a member

of Scheduled Caste, the constitution (Scheduled Tribes Order, 1950) does not provide any such condition. This view has been upheld by the Supreme Court in the case reported in **AIR 1964 SC** at p. 201.

3. It may be stated that unlike members of Scheduled Castes members of Scheduled Tribes remain in homogenous groups and quite distinct from any other group of Scheduled Tribes. Each Tribe lives in a compact group under the care and supervision of the elders of the Society whose word is obeyed in all social matters. A member committing breach of any prescribed conduct is liable to be excommunicated. The social custom has a greater binding force in their day to day life.
4. In the case of marriage between a tribal with a non-tribal the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the Society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstance may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community. This view has been held by the Assam High Court in *Wilson Read v. CS. Booth*, reported in ALR 1958 Assam at p. 128 where it has been held—

“The test which will determine the membership of the individual will not be the purity of blood but his own conduct in following the customs and the way of life of the tribe; the way in which he has treated by the community

**GOVERNMENT OF ANDHRA PRADESH  
ABSTRACT**

Social Welfare Department - Extension of the benefits available for SC's, ST's, & BC's to the children of Inter Caste Marriages — Deletion of Para 2 in G.O.Ms.No.371, Dated: 13-4-1976. — Orders - Issued.

**SOCIAL WELFARE (CV) DEPARTMENT**

**G. O. Ms. No. 91**

**Dated: 3-10-2007.**

Read the following:-

1. G. O. Ms. No. 546, E & W, Dated: 15-7-1974.
2. G. O. Ms. No. 583, E & SW, Dated: 24-7-1974.
3. G. O. Ms. No. 632, E & SW, Dated: 19-8-1974.
4. G. O. Ms. No. 496, E & SW, Dated: 21-6-1975.
5. G. O. Ms. No. 371, E & SW (B2) Deptt. Dated: 13-4-1976.

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**ORDER:**

The Government have issued orders in the G.Os. Read above sanctioning certain incentives and non-statutory educational concessions like scholarships, hostel facilities, fee concessions etc., to the children born of inter-caste marriages on the basis of the caste of either parent.

After careful consideration and keeping, in view of the advice of the Law Department, Government hereby order that the Para 2 of G. O. Ms. No. 371, E & SW (B2) Department, Dated: 13-4-1976 is hereby deleted with immediate effect. The remaining paras of the G.O. will be intact.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF  
ANDHRA PRADESH)**

**A.P.V.N. SARMA  
SPECIAL CHIEF SECRETARY TO GOVERNMENT.**



**GOVERNMENT OF ANDHRA PRADESH**  
**ABSTRACT**

**Tribal Welfare Department – Appeal Petition filed by Trinath Majhi S/o Biswambar Majhi, Srikakulam District – under Section 7(2) of A.P. (SC. ST & BCs) Regulation of Issue Caste Community Certificates Act 16 of 1993 – against the Proceedings of the Collector, Srikakulam District, 08.10.2002- Rejected –Orders – Issued.**

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**SOCIAL WELFARE (CV.2) DEPARTMENT**

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**G.O. Ms. Mo. 49**

**Dated: 1-6-2004,**

**Read the following:**

1. Proceedings of the Collector, Srikakulam District, Rc. No. 928/99 C1, dated, 08.10.2002.
2. Appeal Petition filed by Trinath Majhi S/o Biswambar Majhi, Srikakulam District before M(TW), dt. 31.10.2002.
3. Govt. Memo No. 17353/C.V.2/2002-1, dated 21.11.2002.
4. From the Collector, Srikakulam District. Lr Rc. No. 928/99 C1, dated 12.3.2003
5. Govt. Memo No. 17353/CV.2/2002-3, dated 21.5.2003, 2.7.2003, 18.8.2003, & 7.11.2003.
6. Govt. Memo No. 17353/CV.2/2002-7, dated 09.2.2004.

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**ORDER:**

On a petition received during the year 1996 alleging that Sri Trinath Majhi S/o Biswambara Majhi, Kusumpuram (V), Kaviti Mandal has obtained bogus Benthoriya (ST) caste certificate from the MRO., Kaviti and the then Tahsildar, Ichapuram of Srikakulam District an secured job as Tracer in O/o Vamsadhara Project Circle, Srikakulam District, the matter was got enquired into in various stages as contemplated in accordance with relevant

rules and it was established that the individual belongs to Oriya Vaddi Caste but no Benthoriya (ST). Based on, the said report the Superintending Engineer, Vamsadhara, Srikakulam, has issued show cause notice to the individual. Aggrieved by the notice the individual Trinath Majhi has filed W.P. No. 19349/96 before the High Court of A.P., Hyderabad, and the Hon'ble High Court in the order dt.12.11.96 while allowing the W.P., set aside the notice. The A.P. High Court also indicates that this order does not preclude the respondent from holding an enquiry into the caste of the petitioner.

2) Accordingly the matter was referred to the MRO, Kaviti and RDO, Tekkali to conduct an enquiry on the genuineness of caste of the individual in the instant case. The Revenue Divisional Officer, Tekkali has submitted report that he had conducted enquiry on the genuineness of otherwise of the caste of Sri Trinath Majhi and enquired the V.A.O., Kusumapuram and reported that these Oriya speaking people are called locally as Oriya "Oddilu" by the villagers. He also verified the Birth and Death Register of Kusumapuram (V) for the year of 1954 and 1960 and found that the caste of the person belonging to those whose surname is Majhi was entered in Birth and Death Register against caste column as "Oriya". Hence the Revenue Divisional Officer, Tekkali concluded that Sri Trinath Majhi S/o Biswambara Majhi belongs to "Oriya" but not "Benthoriya" Community.

3) Under rule 9(1) of A.P. (SC/ST/BCs) issue of Community, Nativity and Date of Birth Certificate Rules, 1997, the matter was referred to the Dist. Level Scrutiny Committee headed by Joint Collector as Chairman for conduct of enquiry and to send the findings to the Collector.

4) The Chairman, DLSC, have issued notice in Form-VI to Sri Trinath Majhi to attend before the Dist. Level Scrutiny Committee on 18.01.2002 to furnish documentary evidence to support of his community claim. He attended on the date of hearing but nothing

was submitted The Joint Collector & Chairman DLSC, Srikakulam requested the Dist Level Scrutiny Committee Members to conduct discrete enquiry into the caste of Sri Trinath Majhi of Kusumauram (V) and to submit reports.

5) All the Officers have conducted enquiries in the matter and reported that the appellant Sri Trinath Majhi S/o Biswambar Majhi, Kusumapuram (V), Kaviti Mandal belonging to Oriya Vaddi Caste by Birth and he had fraudulently obtained the false Benthoriya (ST) Caste certificate by misleading and misrepresentation of the facts to the Revenue Authorities. The DLSC, issued notices to the individual to appear before the Dist. Level Scrutiny Committee of 18.1.2002, 15.2.2002, 3.4.2002, 25.4.2002, 03.5.2002 and 17.5.2002 with documentary evidence in support of his community claim that he belongs to Benthoriya (ST) Caste. The individual has appeared on all the said dates and submitted copies of caste certificates issued to the then Tahsildar, Ichapuram and MRO. Kaviti along with other papers. The DLSC has obtained reports from Revenue Department as well as reports from the Committee Members. The Committee perused all the documents filed by the individual belongs to Benthoriya by simply showing an unattested copy of voterlist of Kusumapuram(V) said to be of the year 1951. After perusing the records and reports the DLSC has finally opined that the individual Sri Trinath Majhi S/o Biswambara Majhi, belongs to Oriya, Vaddi and recommended for cancellation of Benthoriya Caste Certificate fraudulently obtained by the individual.

6) Basing on the findings submitted by the DLSC, the district Collector, has issued notice to the individual to attend on 17.6.2002 duly enclosing a copy of committee report for making representation with supported documents. The individual attended on the day and requested time. Another opportunity was given to attend on 02.9.2002 with supported documents. The individual attended on the day before the Collector and presented

his written agreements which he previously filed before the DLSC reiterating the same thing. Since the written argument were not convincing and not acceptable, the Collector, Srikakulam under section 5(1) of the Act 16/93, cancelled the false Benthoriya Caste Certificate obtained from the Tahsildar Ichapuram and MRO, Kaviti by Sri Trinath majhi S/o Biswambara majhi of Kusumapuram (V), kaviti Mandal vide Collector, proceedings 928/99, C1, dt. 8.10.2002.

7) Aggrieved by the above said orders, the individual has filed appeal petition under section 7(2) of Act, 16 of 1993 before Govt. Govt. in Memo dated 21.11.2002 granted State orders on the operation of proceedings issued by the Collector, Srikakulam Dist, and requested the Collector, Srikakulam to furnish parwise remarks and connected records, the same have furnished vide reference 4<sup>th</sup> read above.

8) The case was taken up for personal hearing on 6.6.2003, 19.7.2003, 20.9.2003. The petitioner has attended for the personal hearing and requested for adjustment to obtain the additional information. The case was posted for next hearing on 06.12.2003. The petitioner and the counsel for the appellant have appeared for the personal hearing and made their arguments and requested for one more adjournment. Again the case posted for next hearing on 27.2.2004, the petitioner and the counsel for the appellant have attended and made their arguments.

9) From the perusal of the records of the appeal: cancellation orders passed by the District Collector and remarks of the Dist Collector, the facts of the case are as follows:

10) Classification of caste as SC/ST/BC was made as per the presidential orders 1950. The caste as noted in the records prior to 1950 can be taken as genuine caste. The SCs and STs Amendment Act 1976 at S. No. 17 the caste Benthoriya is included from 1977 onwards several Oriya speaking people are claiming

themselves as Benthoriya. But prior to 1977 they claimed their caste as Vaddi odiya/oriya etc., they never claimed their caste as Benthoriya (ST)

11) The Govt. of A.P. have issued certain guidelines vide Govt. Memo No. 22427/CV.2/93, dt. 3.5.1999 for issue of Benthoriya (ST) caste certificate in Srikakulam District:-

1. Benthoriya shall be treated as an independent and district tribe and the Authorities concerned shall issue Benthoriya (ST) caste certificate Without going in to the requirement of establishing affinity with Kotia tribe.

2. The certificate issuing authorities are further directed that if the certifying authority is not able to establish the identity of the claimant the authorities may issue Benthoriya (ST) caste certificate to those persons whose names are found recorded in the electoral Roll 1951 as the Benthoriya of their direct descendents..

12) The contention of the appellant is that he belongs to Benthoriya community. His School & College records reflect his caste as Benthoriya. The enquiry report dt. 14.11.1999 of MRO, Kaviti concluded that the appellant was Benthoriya. The MRO, report dt. 14.11.99 found affinity of his grandmother Smt. Lokhmi Majhi w/o Late Bollobo in the voter's list of Kusumapuram village in 1951. But the appellant has failed to produce the original voter's list of 1951 of Kusumapuram (V). The Electoral Roll of 1951 was not available with the Archeological Department to know the caste people of Benthoriya.

13) The Benthoriya Community is recognized as ST under the constitutional order 1950. But the Birth Register for the year 1947 and 1952 of Kusumapuram (v) shows that the ancestors in this family having the surname Majhi claimed their caste as Oriya only.

14) The petitioner has given reasonable opportunity to produce evidence in support of his social status claim, it is clear that he failed to produce any basic documentary evidence like Birth and Death Extracts: genealogical information of his ancestors original Voter's list of 1951 of Kusumapuram (V) to prove that he belongs to Benthoriya community. On verification of records relating to pre-1950 by the M.R.O's that the caste Benthoriya was not recorded in any of the records. In the Birth Register of Kusumapuram (V) for the year 1954 to 1960, the caste of people with surname Majhi was recorded as oriya.

15) On the said facts, after hearing the arguments of the appellant through his counsel and after through perusal of the evidence on record, it is concluded that the petitioner is not entitled to be treated as Benthoriya (ST) community. 16) Govt. after careful examination of the above facts and in exercise of powers conferred under section 7(2) of A.P. (SC, ST & BCs) regulation of issue of community certificates Act, 1 of 1993 and rules made there under, hereby reject the appeal petition filed by Sri Trinath Majhi S/o Biswambar Majhi, Srikakulam District issued in the reference 1<sup>st</sup> read above and the stay granted to the individual is hereby vacated.

17) The records received from the Collector, Srikakulam District through the reference 4<sup>th</sup> read above are herewith returned in

original to the Collector, Srikakulam District and he was requested to acknowledge receipt of the same immediately.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR  
OF ANDHRA PRADESH)**

**M. CHAYARATAN,  
PRINCIPAL SECRETARY TO GOVERNMENT**

**GOVERNMENT OF ANDHRA PRADESH  
SOCIAL WELFARE (CV.2) DEPARTMENT**

**Memo.No.14955/CV.2/2000-26**

**Dated: 04-02-2005**

Sub: - TWD - Benthoriya Vaddi Community people residing in Srikakulam District and surrounding areas- Claiming as Benthoriya enquiry conducted-Further Instructions – Issued - Regarding.

Ref: - W. P. Nos. 6459/88, 11570/88, 13263/89 & 22478/95 filed by Sri G. Srinivasa Rao and others, Judgment of High Court of A.P. dated.23.9.96. .

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While disposing Writ Petitions mentioned in the reference above, the Hon'ble High Court has given directions to the

High Level Committee to consider the question whether the Writ Petitioners belong to Benthoriya Community or not and conduct an enquiry after issuing notices to the concerned persons and consider the question in a proper perspective manner to give quietus for the question permanently. The Hon'ble High Court has also referred to the question of whether Vaddi community people residing in Srikakulam District and surrounding areas are Benthoriya Community which is a Scheduled Tribe or not. Accordingly, the State Level Scrutiny Committee constituted in G.O. Ms. No. 58, SW (J) Department, dated 12.5.97 which has superseded the High Level Committee constituted in G.O. Ms. No. 3, SW (J) Department, dated 18.1.1989 has met 15 times and held detailed discussions on the subject. In this process, several opportunities were given to the petitioners covered by the Writ petitioner as well as the President and General Secretary to A.P. Benthoriya Samkshema Sangham. As the question whether Vaddi community and Benthoriya are one and the same requires detailed ethnographic studies and collection of authentic records from various offices in Andhra Pradesh, Tamilnadu, Orissa and West Bengal, the Tribal Cultural Research & Training Institute (Tribal Welfare Department) (which has a vast experience in conducting Ethnographic & Anthropological studies) was requested to collect the details and furnish a detailed report. Accordingly

Accordingly, Tribal Cultural Researcher & Training Institute has conducted detailed study by collecting secondary data from State Archives and Government departments in West Bengal, Orissa, Andhra Pradesh and Tamil Nadu, primary data from Benthoriya inhabited villages in Orissa and Andhra Pradesh through anthropological methods. The information submitted by the petitioners and their association office bearers to the research team at ITDA. Seethampeta,



Srikakulam district were also examined. TC & TI has submitted its report to the State Level Scrutiny Committee. As per the report of Tribal Cultural Research & Training institute, the people who are now claiming as Benthoriya are locally known as Oddis (Oriya) or Vaddis (Telugu) depending upon their mother tongue. The Committee has also noted that Vaddi community is actually listed in the BC'A' group in the S.No. 37 in the list of Backward Classes issued by Government of Andhra Pradesh. TCR & TI has also submitted reports on the status of individual petitioners. The committee examined the report submitted by Tribal Cultural Research & Training Institute as well as the representations made by the Association and petitioners in several opportunities provided to them. The Committee recommended that Vaddi and Benthoriya are not one and the same. The Committee also recommended that the petitioners do not belong to Benthoriya tribe.

Taking into consideration the recommendations of the State Level Scrutiny Committee, Government hereby issues the following clarifications:

- a. "Vaddi" is a generic term used in Vizianagaram, Visakhapatnam and Srikakulam districts, which refers to all population who speaks Oriya language or hail from Orissa. There is however another community "Vaddi" living in rural areas of Srikakulam District who are basically stone cutters or each workers engaged in digging of wells or de-silting of wells and included in the list of Backward Classes. This community has no social relationship with the group of communities who refer themselves as "Vaddis". Therefore, the individuals who claim to belong to "Vaddi" community

of either of the two communities mentioned are not entitled for Benthoriya (Tribal) certificates, and all such applications must be rejected”.

- b. Further in pursuance of instructions of Govt. Memo No. 22427/CV.2/93, dated. 3.5.1999, the District Collector, Srikakulam has informed that the 1951 electoral rolls were not available. In such cases, the District Collectors are requested to verify other records such as birth or school records etc. of that period i.e., prior to 1951 for arriving at nativity as well as to decide whether any applicant belongs to Benthoriya Tribal or not before issuing certificates.

The Committee after careful examination of the reports of Tribal Cultural Research & Training Institute and documents placed before the committee by the petitioners finally concluded that the following petitioners do not belong to Benthoriya Scheduled Tribes, but they belong to Vaddi which is a backward class.

1. Gaddai Rambabu, S/o Appalaswamy
2. Marala Krishna Rao, S/o Suri
3. Gajjana Manmada Rao, S/o Apparao
4. Gajjana Poorna Rao, S/o Taviti Naidu
5. Gopidalai Srinivasa Rao, S/o Tatanna

The District Collectors, Srikakulam, Vizianagaram and Visakhapatnam are requested to follow the above instructions strictly while considering requests or applications for issue of Benthoriya certificates and also take a necessary action for canceling the certificates of petitioners as per the prescribed Procedure.

**GOVERNMENT OF ANDHRA PRADESH**  
**SOCIAL WELFARE DEPARTMENT**

**Memo.No.10391/GCC.1/2008-**

**Dt. 26.3.2010**

Sub:- TWD-TCR&TI-Certain issues regarding Kamsali  
caste- Reg.

Ref:- 1. Representation of Girijana Sangham, (Regd. No. 242) AP, Hyd, Dt. 02.12.2008.

2. Govt. Memo. No. 10391/GCC. 1/2008-1, dt.05.02.2008

3. Reprn of SK. Kesavanik, with M (TW&RIAD), endorsement dt. 29.1.2009.

4. From DTW., Lr. Rc. No. 263.A/TRI/TEEC, dt. 26.3.2008.

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The attention of the Commissioner, Tribal Welfare, Hyderabad is welfare is invited to the references cited and she is informed that:

In the case of "Pydi" community, the MOTA, GOI mentioned the decision of the Contittution Bench of the Hon'ble Supreme Court dt. 28.11.2000 in case No. 652/2000 of State of Maharastra Vs Milind and others, wherein it was held as under.

- i) It is not at all permissible to hold any enquiry or let in any evidence to decide 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 specially mentioned in the concerned entry in the Constitution (Scheduled Tribes)Order 1950;
- ii) 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 specifically mentioned in it.

- iii) A Notification issued under Clause (i) of Act, 342, Specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of the group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (I) of Article 342 only by the Parliament by law and by no other authority.
  - iv) It is not open to the State Government 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 (i) of the Article 342.
2. Further, in the judgment in WA No. 8641/1982, the Hon'ble High Court of A.P, observed that the main object of the Presidential order and subsequent modifications of lists by the Parliament will be defeated if the parties are permitted to adduce evidence to show that un-enumerated communities are also included in the list; such course of action will defeat the very object of articles 341 and 342 of the Constitution of India and the subsequent Acts of Parliament.
  3. The Commissioner, Tribal Welfare, Hyderabad is informed that his proposal furnished in the reference 4<sup>th</sup> cited for inclusion of Sanar, Dhadi, Dhalia, Navi etc, sub-groups of Sugalis/Lambadis community deserves no consideration in the light of the observations of Hon'ble Supreme Court of India.
  4. The Commissioner, Tribal Welfare, Hyderabad is thereof requested to take necessary action.

**A. K. TIGIDI**

**Special Chief Secretary to Government**

**GOVERNEMENT OF ANDHRA PRADESH**

**ABSTRACT**

Tribal Welfare - Education – Appointment of Teachers  
Reservation of all vacancies in the Educational Institutions  
within the Scheduled Areas In favour of Local Scheduled  
Tribes - Notification under paragraph 5(1) of the Fifth  
Scheduled to the Constitution of India - Issued.

**SOCIAL WELFARE (TW. EDN. II) DEPARTMENT**

**G.O.Ms.No.3**

**Dated 10-01-2000.**

Read the

following:

G. O. Ms. No. 275, Social Welfare (E) Department, dated 5.11.1986.

**ORDER:-**

1. Whereas, under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Andhra Pradesh may by public notification direct that any particular Act of Parliament or of Legislature of the State shall not apply to the Scheduled Areas or any part thereof in the State or shall apply to a schedule area or any part thereof subject to specified exceptions and modifications;
2. AND WHEREAS, in G. O. Ms. No. 275, Social Welfare Department dated 5.11.1986, a notification has been issued exercising the powers conferred under sub-paragraph (1) of

paragraph 5 of the Fifth Schedule to the Constitution of India directing that the posts of teachers in the Educational Institutions in the Scheduled Areas of State shall be filled in only by the local members of the Scheduled Tribes;

3. AND WHEREAS, the Andhra Pradesh Administrative Tribunal in its order dated 25.8.1989 in R. P. Nos 6377 and 6379 of 1988 quashed the orders issued in G. O. Ms. No. 275, Social Welfare Department, dated 5-11-1986 on the ground that the notification issued under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India does not reflect the existence of either a State or a Central Legislation referable for issuing such notification;
4. AND WHEREAS, the division Bench of the High Court of Andhra Pradesh in its judgement dated 20-8-1997 in Writ Appeal No. 874 of 1997 filed by the Project Officer, ITDA, Rampachodavram, East Godavari District, directed to continue the petitioners respondents in their respective posts of teachers without any break as temporary employees until replaced by the qualified local tribals as and when such tribals are available to fill up those posts;
5. AND WHEREAS, the Andhra Pradesh Administrative Tribunal Subsequently while disposing of O. A. No. 4598/97 in its order dt. 22.9.1997 directed the respondents to follow the statutory rules while making recruitment to the posts of Secondary Grade Teachers and also Telugu Pandits, Grade. I in Agency Areas without taking into consideration of the orders issued in G. O. Ms. No. 275, Social Welfare Department, dated 5.11.1986.
6. AND WHEREAS, the Supreme Court of India while allowing Civil Appeal No. 6437/98 in its order dated 18<sup>th</sup>

December, 1998, set aside the orders of the Andhra Pradesh Administrative Tribunal on the ground that the State withdraw the appeals arising out of the S. L. P. Nos. 14562 – 63 of 1989;

7. AND WHEREAS, the Government considers that rule 4(b) of the Andhra Pradesh School Educational Subordinate Service Rules, 1992 and rule 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996 shall be modified to the extent that only scheduled Tribe Women shall be appointed in Scheduled Areas against the 33 1/3% reservation in respect of direct recruitment;
8. AND WHEREAS, the consultation of the Tribes Advisory Council has been made as required under sub –paragraph (5) of paragraph 5 of the Fifth Schedule to the Constitution of India.
9. AND WHEREAS, the Government of Andhra Pradesh in order to strengthen the educational infrastructure in the Scheduled Areas, to promote educational development of Tribals, to solve the phenomnal absenteeism of Teachers in the Schools situated in Scheduled Areas and with a view to protect the interests of local tribals have decided to reserve the posts of teachers in favour of local Scheduled Tribe candidates;
10. AND WHEREAS, the consultation of the Tribes Advisory Council has been made as required under sub –paragraph (5) of paragraph 5 of the Fifth Schedule to the Constitution of India.
11. AND WHEREAS, the Government of Andhra Pradesh in order to strengthen the educational infrastructure in the

Scheduled Areas, to promote educational development of Tribals, to solve the phenomnal absenteeism of Teachers in the Schools situated in Scheduled Areas and with a view to protect the interests of local tribals have decided to reserve the posts of teachers in favour of local Scheduled Tribe candidates

12. AND WHEREAS, the Government considered to re-issue the said orders retrospectively from 5-11-1986 keeping in views the provisions of sub-paragraph (1) of paragraph 5 of fifth Schedule to the Constitution;
11. The following notification will be published in part-IV- B Extraordinary issue of the Andhra Pradesh Gazette, dated.10-01-2000.

#### **NOTIFICATION**

In exercise of the powers conferred by sub paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India and in Supersession of the notification issued in G.O. Ms. No. 275, Social Welfare Department, dated the 5<sup>th</sup> November, 1986, as subsequently amended in G. O. Ms. No. 73, Social Welfare Department, dated the 25<sup>th</sup> April, 1988, the Governor of Andhra Pradesh hereby directs that sections 78 and 79 of the Andhra Pradesh Education Act, 1982 (Act 1 of 1982) and sections 169, 195 and 268 of the Andhra Pradesh Panchayat Raj Act, 1994(Act 13 of 1994) and rule 4(a)of the Andhra Pradesh School Educational Subordinate Services Rules issued in G. O. Ms. No. 538 Education (Ser. II) Department, dated the 20<sup>th</sup> November, 1998 and rule 22 and 22A of the Andhra Pradesh State and Subordinate Service Rules, 1996



and any other rules made in this regard shall apply to the appointment of posts of teachers in schools situated in the Scheduled Areas in the State subject to the modification that all the posts of teachers in the Schools situated in Scheduled Areas in the State of Andhra Pradesh shall be filled in by the local Scheduled Tribe candidates only out of whom 33 1/3% shall be women;

**EXPLANATION:** - For the purpose of this notification, the 'local Scheduled Tribe Candidate' means, the Candidate belonging to the Scheduled Tribes notified as such under article 342 of the Constitution of India and the Candidate themselves or their parents have been continuously residing in the Scheduled areas of the Districts in which they are residents till to date since the 26<sup>th</sup> January, 1950.

**(BY ORDER AND IN THE NAME OF THE  
GOVERNOR OF ANDHRA PRADESH)**

**C.R.BISWAL**

**SECRETARY TO GOVERNMENT**

**OFFICE OF THE COMMISSIONER TRIBAL WELFARE  
DEPARTMENT DSS BHAVAN, MASAB TANK,  
HYDERABAD.**

**Rc.No. 950/2011/TRI/VC-7**

**DATED: 07-07-2011**

Sub: TWD – TCR & TI – TSV – Hyderabad - issuance of  
Local Scheduled Tribe certificates –  
Guidelines/instructions issued – Regarding.

Ref: G.O.Ms. No.3 Social Welfare (TW.EDN.II) Department  
dt. 10.1.2000.

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I invite your attention to the reference and subject cited. It has come to the notice of the Government that the Tahsildars of Agency areas are issuing “Local Scheduled Tribe” certificates without properly verifying and basing on affidavits, declarations of the claimants and village elders etc., which is not correct. Such issue of certificates lead to agitations, law & order situation and even Court cases. In several instances, TCR & TI was requested to conduct further enquires. Hence the need to streamline issue of ‘local ST certificate’ is felt.

As per the definition in G.O.Ms. No. 3 Social Welfare (TW.Edn.II) Dept. dt.10.1.2000 Local Scheduled Tribe “claimant shall belong to a Scheduled Tribe” and he/she or

their parents/forefathers shall be continuous residents of scheduled area since 26<sup>th</sup> January, 1950. In other wards a candidate may belong to the Schedule Tribe, but for claiming “Local” Scheduled Tribe status he/she on their parents/forefathers shall be permanent Residents of the given Scheduled area since 26<sup>th</sup> January 1950 till the date of issue of the local ST certificate.

The claimants shall produce the documentary evidences to prove such residence which may include.

- Birth and Death registers prior to 1950.
- Electoral role prior to 1950.
- Sale Deed documents for Agriculture prior to 1950 etc.
- School records.
- Any other acceptable documentary evidence.

After carefully verifying the genuineness of such evidences produced by the claimant and if required, conducting detailed local enquiry, the Tahsildars of Scheduled Areas have issue “Local Scheduled Tribe” certificates.

The Project Officers are requested communicate these instructions to all Tahsildar and Revenue Divisional Officers for strict compliance. They are also requested to review the status on issuance of “Local Scheduled Tribe Certificates” every 3 months.

All Project Officers are once again informed not to allow issue of ‘local Scheduled Tribe’ merely based on self declaration or oral evidence of other.

**Sd/- Commissioner of Tribal Welfare for commissioner,  
TW.**

**ORDER No. 187, HOME (JUDICIAL) DATED. 22<sup>ND</sup>  
JANUARY 1918.**

The following notification will be published in the English, Telugu and Oriya Languages in three consecutive issues of the Fort, St. George Gazette:-

**NOTIFICATION**

In exercise of the powers conferred by Section 7 of the Agency Tracts Interest and Land Transfer Act, 1917 (1 of 1917) the Governor in Council is pleased to make the following rules to regulate the transfer of land in the Agency tracts of the Ganjam, Vizagapatnam and Godavari Districts :- Rules under the Agency Tracts Interest and Land Transfer Act. 1917(1 of 1917).

Rule 1 the following are notified as the hill tribes for the purposes of this Act:-

**GANJAM**

Kondas, Savaras, Panos and Haddis.

**VIZAGAPATNAM**

Kondas	Paigarapu
Gadabas	Palli
Pangi Gadabas	Bagata
Olaro Gadabas	Kotia
Jodla Porojas	Dhora
Pengu Porojas	Kapu Savaras
Bonda Porojas	Malia Savaras
Didua Porojas	Kodu

Daruva Porojas	Kota Khonds
Gonodi	Dombs
Koyas	Dhongria Khonds
Konda Dhoras	Tikiria Khonds
Mukha Dhoras	Desya Khonds
Reddi Dhoras	Mogata Goudus
Konda Kapus	Ojulus
Saravas	Yenity Khonds
Jatapus	Ghasis
Maune	Malis
Pydi	
Relli	
Palasi	
Muli	

**GODAVARI**

Koyas and Konda Reddis

Konda Doras, Konda Kapus, Malas, Kammaras, Madigas,  
Goldabas

(Fort St. George Gazette Part I). Dt. 19-4-32 page. 710)



## OTHER BOOKS OF AUTHOR

01. గిరిజన జీవన సంఘర్షణ
02. ఆదివాసుల అరణ్యరోదన
03. అభివృద్ధిలో ఆదివాసులు
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