



tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward Class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward Class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of constitutional goal.

7. It is not disputed that the couple performed court marriage outside the village; settled down in Gaya and their son, the appellant also born and brought up in the environment of forward community did not suffer any disability from the society to which he belonged. Mr Krishnamani, learned Senior Counsel contended that the appellant used to visit the village during recess/holidays and there was cordial relationship between the appellant and the village community, which would amount to the acceptance of the appellant by the village community. By no stretch of imagination, a casual visit to the relative in other village would provide the status of permanent resident of the village or acceptance by the village community as a member of the tribal community.

8. The "tribe" has been characterised by Dr. Jai Prakash Gupta in *The Customary Laws of the Munda and the Oraon* quoted by this Court in *State of Kerala v. Chandramohanani*¹, (SCC at p. 432, para 4) as under:

"Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single Government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organisation in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans."

Bhowmik, K.L. in *Tribal India: A Profile in Indian Ethnology* observed:

"Tribe in the *Dictionary of Anthropology* is defined as 'a social group, usually with a definite area, dialect, cultural homogeneity, and unifying social organisation. It may include several subgroups, such as clans or villages. A tribe ordinarily has a leader and may have a common

¹ (2004) 3 SCC 429 : 2004 SCC (Cri) 818

ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family, or blood ties". (SCC pp. 432-33, para 4)

9. The object of Articles 341, 342, 15(4), 16(4) and 16(4-A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong.

10. In *Kumari Madhuri Patil v. Addl. Commr., Tribal Development*² this Court denounced the practice of persons claiming benefits conferred on STs by producing fake, false and fraudulent certificates: (SCC p. 254, para 13)

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate."

11. Similar view was reiterated in *Director of Tribal Welfare, Govt. of A.P. v. Laveti Giri*³. In the case of *Punit Rai v. Dinesh Chaudhary*⁴ this Court at p. 221 in para 39 observed as under:

"39. A person in fact not belonging to the Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on the Constitution. No court of law can encourage commission of such fraud."

12. Further in *Punit Rai case*⁴ in para 27, this Court observed that: (SCC p. 219)

"27. The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage."

² (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259

³ (1995) 4 SCC 32 : 1995 SCC (L&S) 914 : (1995) 30 ATC 166

⁴ (2003) 8 SCC 204