THE STATE OF MAHARASHTRA & ANR. A

v.

KESHAO VISHWANATH SONONE & ANR.

(Civil Appeal No. 4096 of 2020)

DECEMBER 18, 2020 B

[ASHOK BHUSHAN, R. SUBHASH REDDY AND M. R. SHAH, JJ.]

Constitution of India – Article 342 –Constitution (Scheduled Tribes) Order, 1950 – High Court allowed writ petitions inter alia C *declaring 'Gowari' as 'Gond Gowari' a Scheduled Tribes referred to in Entry 18, 1950 Order – On appeal, held: Art.342(2) provides that any inclusion or exclusion from the list of Scheduled Tribes specified in a notification issued u/Art.342(1) can be done only by Parliament by law – High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe* D *"Gowari" is part of Scheduled Tribe "Gond Gowari" included in the 1950 Order – No conflict in the ratio of Constitution Bench judgments in* B. Basavalingappa *case reported as* [1965] SCR 316 and Milind *case reported as* [2000] 5 Suppl. SCR 65 – *Further, High Court also could not have entered into the issue that "Gond Gowari"* E *is no more in existence and became extinct before 1911 –Caste 'Gowari' is not the same as 'Gond Gowari' – High Court erred in declaring 'Gowari' as 'Gond Gowari', a Scheduled Tribes referred to in item 28 in Entry 18 – Impugned judgment set aside – Writ petitions dismissed – Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 – States Reorganisation Act, 1956 –* F *Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 – Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002.*

Allowing the appeals, the Court

HELD: 1.1 Part XVI of the Constitution deals with "Special Provisions relating to certain classes". Article 342 of the Constitution deals with Scheduled Tribes. Article 366(25) defines Scheduled Tribes. In exercise of power under Article 342, the President had issued the Constitution (Scheduled Tribes) Order, 1950 dated 06.09.1950. The Schedule contains details of G H

Scheduled Tribes with reference to different States. Part III to the Schedule deals with the State of Bombay and Entry No.9 of Part III mentioned "9. Gond". Part IV dealt with Madhya Pradesh where also Entry No.12 mentions "Gond [including Madia (Maria) and Mudia (Muria)]". The Parliament passed an Act namely, The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 to provide for the inclusion in, and the exclusion from the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes and matters connected therewith. As per Section 4 of the Act, 1956, Constitution (Scheduled Tribes) Order, 1950 was amended in the manner and to the extent as specified in Schedule III. In Schedule III, Entry No.9 was substituted by following Entry:- "9. Gond or Rajgond." Part IV which deals with Madhya Pradesh, Entry 12 was substituted. [Paras 26-30][621-D, G; 622-B, E-H]

1.2 Amendment to the Scheduled Tribes with respect to Madhya Pradesh was consequent to recommendations by the report of the Backward Classes Commission also known as Kalelkar Commission. With regard to Madhya Pradesh with regard to list of Scheduled Tribes published in Constitution (Scheduled Tribes) Order, 1950 together with the revision suggested by the Backward Classes Commission is included in volume II of the Report. Entry No.12 in the List of the Scheduled Tribes was with respect to Gond [including Madia (Maria) and Mudia (Muria)]. Backward Classes Commission suggested addition of several sub-tribes of Gond with Gond. Column No.VI of the Table contains heading "Commission's recommendation for inclusion". The States Reorganisation Act, 1956 was enacted by Parliament to provide for the reorganisation of the States of India and for matters connected therewith. Section 8 provided for formation of a new Bombay State. By virtue of Section 8(1)(c) certain districts, which then existed in the State of Madhya Pradesh were included in the new Bombay State. The said districts were earlier part of the State of Madhya Pradesh. Section 41 of the States Reorganisation Act provide for modification of the Scheduled Castes and Scheduled Tribes Orders with regard to territorial changes and formation of new States under the provisions of Part II. In exercise of power under Section 41 of the States Reorganisation Act, Scheduled Castes and Scheduled

Tribes Lists modification under Order 1950 was issued dated 29.10.1956. Part IV of the Schedule dealt with Bombay. Schedule III contains the modification to the Constitution (Scheduled Tribes) Order, 1950. Thus, after recommendation of Backward Classes Commission for the State of Madhya Pradesh by virtue of Act, 1956, with the tribe "Gond" "Gond Govari" was added as the Scheduled Tribes by modification order dated 29.10.1956. With respect to State of Bombay in specific areas, with regard to entry of Gond as Scheduled Tribe, several sub-tribes including "Gond Govari" was added. [Paras 31-34][624-D-F; 626-B-C, D-F; 628-A-B]

1.3 The Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) to provide for the inclusion in, and the exclusion from the list of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the re-adjustment of representation of parliamentary and assembly constituencies in so far as such re-adjustment is necessitated by such inclusion or exclusion and for matters connected therewith. The Statements of Objects and Reasons of the Bill is relevant. The second Schedule of the Act, 1976 provides for substitution in Constitution (Scheduled Tribes) Order, 1950 as indicated therein. With regard to State of Maharashtra, which was formed, Part IX of the Second Schedule, Entry No.18 deals with Scheduled Tribe "Gond". Subsequently, the Parliament passed the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002. The only amendment which was made with respect to Schedule pertaining to Maharashtra in Entry 18 was to the following effect:- "(i) in Part IX – Maharashtra- (i) omit entry 12; (ii) in entry 18 for "Gond Rajgond" substitute "Gond, Rajgond"; (iii) omit entry 45;"

The above amendment in the Scheduled Castes order indicate the care which was taken by the legislature in describing the Scheduled Tribes entries. By the above amendment in earlier Entry No.18 of "Gond Rajgond", substitution was made by which now it is read as "Gond, Rajgond". [Paras 35-39][628-B-D; 629-B-C, E, H; 630-B-C]

1.4 Following questions arise for consideration:-

1) Whether the High Court in the writ petition giving rise to these appeals could have entertained the claim of the caste "Gowari", which is not included as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950, that it be declared a Scheduled Tribe as "Gond Govari" which is included at Item No.18 of Constitution (Scheduled Tribes) Order, 1950 applicable in the State of Maharashtra and further to take evidence to adjudicate such claim?

2) Whether the ratio of the judgment of the Constitution Bench of this Court in B. Basavalingappa Vs. D. Munichinnappa, AIR 1965 SC 1269 permits the High Court to take evidence to find out whether 'Gowari' are 'Gond Gowari' and is there any conflict in ratio of judgment of Constitution Bench in B. Basavalingappa and subsequent Constitution Bench judgment of this Court in State of Maharashtra Vs. Milind, (2001) 1 SCC 4?

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

4) Whether the conclusion of the High Court in the impugned judgment that 'Gond Gowari' Tribe was extinct before 1911 is supported on the materials which were on record before the High Court?

5) Whether caste 'Gowari' is same as 'Gond Gowari' included at Item No.28, Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 and the High Court could have granted declaration to caste 'Gowari' as 'Gond Gowari' entitled for Scheduled Tribe certificate?

6) Whether the High Court is correct in its view that 'Gond Gowari' shown as Item No.28 in Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 is not a sub-tribe of Gond, hence, its validity cannot be tested on the basis of affinity test specified in Government Resolution dated 24.04.1985?[Para 40][630-C-H; 631-A-C]

1.5 QUESTION NOS. 1 AND 2

The Constitution of India contains ample provisions for fulfilment of the Constitutional aspirations of social justice to the Scheduled Castes and Scheduled Tribes and to socially and educationally backward classes of citizens. Articles 341 and 342 and Part XIV of the Constitution contains several provisions as special provisions relating to certain classes. Article 342 of the Constitution envisages public notification specifying the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall be for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to a State after consultation with Governor thereof. Sub-clause (2) contains another important provision which provides that any inclusion or exclusion from the list of Scheduled Tribes specified in a notification issued under clause (1) of Article 342 can be done only by Parliament by law. Sub-clause (2) of Article 342, thus, contains a provision conferring authority only to the Parliament to include and exclude a Scheduled Tribe in the list as specified in the sub-clause (1) of Article 342. [Para 41][631-C-F]

1.6 The High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe "Gowari" is part of Scheduled Tribe "Gond Gowari", which is included in the Constitution (Scheduled Tribes) Order, 1950. There is no conflict in the ratio of Constitution Bench judgments of this Court in B. Basavalingappa's case and State of Maharashtra Vs. Milind and Ors. The ratio of B. Basavalingappa's case as noted in paragraph 6 of the judgment is reiterated by subsequent two Constitution Bench judgments in Bhaiya Lal's case and Milind's case. There being no conflict in the ratio of the above Three Constitution Bench judgments, there is no substance in submission that for resolving the conflict, the matter need to be referred to a larger Constitution Bench. Thus, question Nos.1 and 2 are answered accordingly in following words:-

(i) The High Court in the writ petition giving rise to these appeals could not have entertained the claim of a caste "Gowari" that it be declared a Scheduled Tribe as "Gond Gowari" included at Entry No.18 of the Constitution (Scheduled Tribes) Order, 1950

nor High Court could have taken evidence to adjudicate the above claim.

(ii) There is no conflict in the ratio of the judgment of Constitution Bench of this Court in Basavalingappa's case and Milind's case. [Para 61][645-G-H; 646-A-D]

2.1 QUESTION NOS. 3 AND 4

The Scheduled Tribe "Gond Gowari" as existing in Item No.28 of Entry 18 of Constitution (Scheduled Tribes) Order, 1950 applicable to State of Maharashtra is continuing in the List of Scheduled Tribes of Bombay State (now State of Maharashtra) since 29.10.1956. To a large number of members of the "Gond Gowari" caste Scheduled Tribe certificates have been issued by the competent authority in the State of Maharashtra from time to time. In Writ Petition No. 4779 of 2008 (Adivasi Gond Govari (Gowari) Sewa Mandal through its President vs. State of Maharashtra and others)(one out of the four writ petitions before the High Court) the writ petitioner has prayed for quashing and setting aside the caste validity certificates issued in the name of respondent Nos. 4 to 19 as "Gond Gowari", Scheduled Tribe. The fact that before the High Court there was a writ petition where caste certificates granted to 16 respondents of "Gond Gowari" were sought to be quashed clearly proved the existence of community "Gond Gowari". Although there have been recommendations by the State of Maharashtra earlier in the year 1967 and thereafter in the year 1979 to include the "Gowari" as Scheduled Tribe, the said recommendations were never accepted by the Parliament since in spite of passing of several Amendment Acts by the Parliament to the Constitution (Scheduled Tribes) Order, 1950 Entry of "Gond Gowari" in the Scheduled Tribe was never deleted. A private bill to delete Entry of "Gond Gowari" and substitute it by Gowari was not passed by the Parliament and turned down. The High Court has also referred to and relied on the book "Tribes and Castes of the Central Provinces of India by R.V. Russell and Rai Bahadur Hira Lal wherein castes "Gond Gowari" and "Gowari" were separately dealt with as distinct castes. It is also on the record that the State of Maharashtra even though it had recommended vide letters dated 26.03.1979 and 12.06.1979 to include Gowari in the list of Scheduled Tribes but

on 06.11.1981 State of Maharashtra wrote to Ministry of Home Affairs, New Delhi dealing with the subject of the Scheduled Tribes in paragraph 3(iii). The State Government recommended Gowari not to be included as they having not fulfilled criteria of Scheduled Tribe. It is to be noted that in letter dated 26.03.1979 of the Government of Maharashtra to the Union of India although recommendation was made to include Gowari in Scheduled Tribe but there was no recommendation to delete "Gond Gowari" from the list of Scheduled Tribes. Thus, the recommendation to include Gowari as a separate Scheduled Tribe was forwarded by the State of Maharashtra in the year 1979 which was withdrawn in 1981 and after 1981 the State's stand has been that "Gond Gowari" and "Gowari" are two separate castes and Gowari is not entitled for the benefit of Scheduled Tribe certificate. The Government of State of Maharashtra, Tribal Development Department has issued G.R. dated 24.04.1985 where the State Government has referred to "Gond Gowari" as small sub-Tribe of Gond and non-Scheduled Tribe caste was referred as Gowari. Along with the Government Resolution dated 24.04.1985 a comparative Chart was annexed of Scheduled Tribe and non-Scheduled Tribe community which was claiming benefit. The materials which were on the record before the High Court as well as continuance of "Gond Gowari" as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950 for the last more than 60 years, it was not open for the High Court to proceed into the inquiry as to whether Scheduled Tribe "Gond Gowari" is not in existence. [Paras 62-65][647-A-D, F-G; 648-B-D; 649-E-F]

2.2 The High Court itself has in its judgment noticed and found the mention of "Gond Gowari" in Census of 1891 and 1901. The substantial figures of "Gond Gowari" in the above two Censuses in Nagpur Division were noticed. The High Court itself having noticed that the basis of Census in 1911 was changed, classification was made on the basis of traditional occupation in which group IV was of Forest and Hill Tribes and Group V was of Graziers and Dairymen, the figures of 1911, 1921 and 1931 have been noticed where in Group V Graziers and Dairymen, there was mention of Gowari. Mere fact that in Censuses of 1911, 1921 and 1931 figures were given only of Group V, i.e., Graziers and Dairymen and there was no mention of "Gond Gowari" cannot

lead to conclusion that "Gond Gowari" have become extinct before 1911. A Scheduled Tribe which admittedly was in existence and had a distinct identity shall not be treated to have become extinct merely because the basis of Census has been changed in the subsequent years. The benefit given to a Scheduled Tribe cannot be taken away on the basis of figures given in Census operation only. There have been amendments in Constitution (Scheduled Tribes) Order, 1950 from time to time. Several Tribes were deleted from the list by the Act of Parliament and several new Tribes were included. There had been recommendations by the Joint Committee of Parliament for exclusion of the Tribes which were excluded if there was no return in respect of those communities in Censuses of 1961 and 1971. Statement of Objects and Reasons of The Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1976 clearly indicates that those Scheduled Tribes and Schedules Castes were excluded if only there was no return in respect of Census of 1961 and 1971. Thus, the whole basis of judgment of the High Court that Tribe "Gond Gowari" was extinct prior to 1911 Census and in subsequent Censuses 1911, 1921 and 1931 they were not shown in Group V is completely flawed. The inclusion of sub-Tribe as "Gond Gowari" in the Constitution (Scheduled Tribes) Order, 1950 was on 29.10.1956 when sub-Tribe "Gond Gowari" was included in the Scheduled Tribe list it has to be presumed that the said inclusion was after consultation with the State and after considering the relevant materials. The High Court could not have questioned the inclusion of the Scheduled Tribe "Gond Gowari" in the Constitution (Scheduled Tribes) Order, 1950 on the basis of reasoning as adopted by the High Court. The High Court has referred to and relied on the book "Tribes and Castes of the Central Provinces of India" by R.V. Russell and Rai Bahadur Hira Lal in which book in Volume III community Gond, "Gond Gowari" and Gowari were all separately dealt with. "Gond Gowari" has been treated as a distinct caste and in the Census they have been amalgamated with Gowari. The account given by Russell does not lead to any conclusion that "Gond Gowari" were extinct before 1911. [Paras 70, 71 and 74][651-E-H; 652-A-B, D-G; 654-C]

2.3 It was after the report of Backward Classes Commission (1955), where recommendation was made to include Gowari as

sub-tribe of Gond for the State of Madhya Pradesh, consequently by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 in State of Madhya Pradesh "Gond Gowari" was added in Entry 12 and after re-organisation of the State, in Districts which came into State of Bombay, "Gond Gowari" was added by Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 dated 29.10.1956 "Gond Gowari" was added. There have been conscious addition by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 and Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 as "Gond Gowari" it cannot be accepted that the Parliament included Tribe which had become extinct before 1911. The High Court in paragraph 68 of the judgment has itself referred to Report of Research Officers dated 12.05.2006. On the basis of the decision taken in respect Gowari community under the Chairmanship of Hon'ble Chief Minister on 29.05.2005 Tribal Development Department was entrusted to ascertain the facts. The Research Officers on 12.05.2006 personally visited the areas in which maximum population of Gowari caste and "Gond Gowari" caste were found in different villages of District Gadchiroli. The High Court itself has noticed that the Research Officers conducted research and has also found Entry of "Gond Gowari" made on 01.07.1955. Thus, the Research Officers before 29.10.1956 found "Gond Gowari" hence the above evidence which was relied by the High Court itself proved that "Gond Gowari" Tribe was in existence and found personally by the Research Officers. The conclusion of the High Court that Research Officers did not find any Entry as "Gond Gowari" is factually incorrect and contrary to what was found in paragraph 68. [Paras 75-78][654-C-H; 655-E-F; 656-A]

2.4 This Court has already noted the Government Resolution dated 24.4.1985 issued by the Tribal Development Department of the State, the difference between "Gond" and "Gond Gowari", the difference in the character and customs of Scheduled Tribe community of "Gond Gowari" and community of Gowari as extracted above. The Government Resolution was issued after study by the State Government, the High Court although has noticed above Resolution in paragraph 70 of the judgment but has given no reason as to why differentiation in two

Tribes is to be discarded. There is one more reason due to which the conclusion of the High Court that Scheduled Tribe "Gond Gowari" was extinct before 1911 has to be flawed. The reason is that in Writ Petition No.4779 of 2008 filed by Advasis "Gond Gowari" a prayer was made to quash the Scheduled Tribe certificates to "Gond Gowari" granted to respondent Nos. 4 to 19. The High Court by passing order has called for certificates of "Gond Gowari". The High Court further in paragraph 83 after perusing the records of the Committee found 39 claimants produced the documents which are in the nature of entries in P-I revenue record pertaining to the period 1922-1923. When before the High Court Scheduled Tribe certificates of "Gond Gowari" were filed in large number and there were documents to support by the revenue entries some of which are prior to 1950 and which certificates were sought to be quashed in the writ petition, the existence of Scheduled Tribe "Gond Gowari" was very much found. The Caste Scrutiny Committee having validated the said certificates it was not open for the High Court to say that Scheduled Tribe "Gond Gowari" became extinct prior to 1911. The host of the evidence which was before the High Court including the Research Officers' Report dated 12.05.2006 and Scheduled Tribe certificates of the candidates who were "Gond Gowari" it was not open for the High Court to come to the conclusion that Scheduled Tribe "Gond Gowari" was extinct prior to 1911. The High Court summoned all the certificates and there was no finding that certificates were fake or persons who were given certificates are non-existent. The High Court erred in coming to the conclusion that "Gond Gowari" Tribe was extinct prior to 1911. Even on the basis of materials which were brought before the High Court no conclusion could have been drawn that "Gond Gowari" Tribe was extinct prior to 1911. [Paras 79-81][656-B-D, H; 657-A-D]

2.5 Thus, Question Nos.3 and 4 are answered in the following manner:

ANSWER NO.3

The High Court could not have entered into the issue that "Gond Gowari" which was Scheduled Tribe mentioned in

Constitution (Scheduled Tribes) Order, 1950 as amended upto 1976 is no more in existence and became extinct before 1911.

ANSWER NO.4

The conclusion of the High Court in the impugned judgment that "Gond Gowari" Tribe had been extinct before 1911 is not supported by the materials which were on record before the High Court. [Para 82][657-E-G]

3.1 <u>QUESTION NO.5 & 6</u>

The caste 'Gowari' and 'Gond Gowari' are two distinct and separate castes. Russel and Hiralal have separately dealt with 'Gowari' and 'Gond Gowari' and have categorically stated that 'Gond Gowari' have been treated as distinct castes from 'Gowari'. The 'Gowari' which is another backward community have not been included in the list of Scheduled Tribes in the book published by Anthropological Survey of India, People of India, National Series Volume III on "The Scheduled Tribes'. [Paras 83][657-H; 658-A-B]

3.2 This Court has further noticed the Census of 1891 and 1901 which have been referred by the High Court. The population of 'Gowari' has been shown separately from the population of 'Gond Gowari'. The ratio of the Constitution Bench judgment of this Court in Basavalingappa and Bhaiya lal as well as Milindhas also been noticed. The High Court could not have undertaken the enquiry to declare the caste which is not included in the Scheduled Tribes Order, 1950 as a Scheduled Tribe. The High Court could not have granted a declaration that the caste 'Gowari' is 'Gond Gowari' which is referred to in Item 28 of Entry 18 of Constitutional Scheduled Tribes Order, 1950 amended as on date. The High Court's view that 'Gond Gowari' is not a sub-tribe of 'Gond', hence, its validity cannot be tested on the basis of the affinity test specified in the Government Order dated 24.04.1985 is also not correct. The report of the first Backward Commission (1955) by which recommendation was made to add 'Gowari' as a sub-tribe of 'Gond' was on the basis of study and research by the Backward Commission which cannot be brushed aside. This Court has also noticed the authoritative books on Tribes in Central India that 'Gond Gowari' is a sub-tribe of 'Gond'. In the

A **Government Resolution dated 29.04.1985 comparative chart was annexed where general information regarding Scheduled Tribes and non-Scheduled Tribes i.e. 'Gond Gowari' and 'Gowari' have been given. The Government Resolution also mentioned that 'Gond Gowari' is also a small sub-tribe of 'Gond' tribe. [Paras 86-88][859-B-F]**

B

3.3 With the 'Gowari' word 'Gond' is prefixed. The expression 'Gond Gowari' clearly expresses that the community 'Gond Gowari' has to do with tribe 'Gond'. 'Gond Gowari' is a community which has affinity with 'Gond' and is sub-tribe of 'Gond'. The entry of 'Gond Gowari' in Scheduled Tribes Order 1950 was as a sub-tribe of 'Gond' which is clear from a report of the Backward Classes Commission, 1955. When the inclusion of the entry 'Gond Gowari' was as (sub-tribe of Gond), its affinity with 'Gond' cannot be ignored on any basis. This Court entertains its own doubts about the correctness of the ratio of judgment in

C

D **the State of Maharashtra versus Mana Adim Jamat Mandal with regard to a group entry. As per Article 342(1), tribes or tribal communities or parts or groups within tribes or tribal communities shall for the purposes of the Constitution be deemed to be Scheduled Tribes. There has to be some purposes for joining number of tribes together in one entry, but in case with regard to 'Gond Gowari' the affinity is more than apparent with 'Gond' and the judgment of this Court in State of Maharashtra versus Mana Adim Jamat Mandal (Supra) cannot be read as an authority to hold that 'Gond Gowari' is not a sub-tribe of 'Gond' and no affinity is required to be established with Gond by the tribe 'Gond Gowari'. There is no infirmity in Government Resolution dated 24.04.2984 insofar as Scheduled Tribe 'Gond Gowari' is concerned. [Paras 92, 94][661-B-D, F-H; 662-A]**

E

F

3.4 <u>ANSWER NO.5</u>

The caste 'Gowari' is not the same as 'Gond Gowari'. The

G **High Court could not have granted declaration of caste 'Gowari' as 'Gond Gowari'.**

<u>ANSWER NO.6</u>

The High Court is not correct in its view that 'Gond Gowari'

H **shown as item No.28 in Entry 18 of Scheduled Tribes Order, 1950,**

is not a sub-tribe of 'Gond'. The validity of caste certificate to 'Gond Gowari' has to be tested on the basis of affinity test as specified in the Government Resolution dated 24.04.1985. In view of the foregoing discussion, none of the reasons given by the High Court in paragraph 74 of the judgment are sustainable to hold that 'Gowari' are entitled to Scheduled Tribes Certificate of 'Gond Gowari'. The entire basis of the judgment of the High Court that tribe 'Gond Gowari' was completely extinct before 1911 having been found to be flawed, the entire basis of judgment is knocked out. [Paras 95, 96][662-B-E]

3.5 When the State has expressly after 1979 written to the Government of India on 06.11.1981 that 'Gowari' community does not fulfill the criteria of Scheduled Tribe and thereafter after 1984, several studies were conducted by Tribal department in State of Maharashtra including report dated 12.05.2006 which reaffirms that 'Gond Gowari' and 'Gowari' are distinct community and 'Gowari' is not Scheduled Tribe, there was no error in taking stand before the High Court in the writ petition that 'Gowari' are not entitled for Scheduled Tribe Certificate. [Para 98][663-A-B]

4. In the ends of justice it is directed that the admission taken and employment secured by the members of 'Gowari' community on the basis of Scheduled Tribe certificate granted to them between 14.08.2018 till date shall not be affected by this judgment and they shall be allowed to retain the benefit of Scheduled Tribe obtained by them. However, the above Scheduled Tribe candidates shall not be entitled to any further benefit as Scheduled Tribe except their initial admission in different courses or employment at different places on the strength of Scheduled Tribe certificate given to the 'Gowari' Community obtained between 14.08.2018 and this day. The High Court erred in declaring 'Gowari' as 'Gond Gowari' a Scheduled Tribes referred to in item 28 in Entry 18.The impugned judgment of the High Court dated 14.08.2018 is set aside and the writ petitions dismissed. [Paras 101-103][664-B-D]

State of Maharashtra v. Milind and Ors. **(2001) 1 SCC 4 : [2000] 5 Suppl. SCR 65;** *B. Basavalingappa v. D.*

A *Munichinnappa and Ors.* **AIR 1965 SC 1269 : [1965] SCR 316;** *Bhaiya Lal v. Harikishan Singh and Ors.* **AIR 1965 SC 1557 : [1965] SCR 877 – followed.**

Srish Kumar Choudhury v. State of Tripura and Ors. **(1990) Suppl. SCC 220 : [1990] SCR 576;** *Palghat Jilla*
B *Thandan Smudhaya Samrakshna Samithi and Anr. v. State of Keralaand Anr.* **(1994) 1 SCC 359 : [1993] 3 Suppl. SCR 872;** *Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors.* **(1994) 6 SCC 241 : [1994] 3 Suppl. SCR 50;** *Nityanand*
C *Sharma and Anr. v. State of Bihar and Ors.* **(1996) 3 SCC 576 : [1996] 2 SCR 1 – relied on.**

State of Maharashtra v. Mana Adim Jamat Mandal **(2006) 4 SCC 98 : [2006] 2 SCR 1142 – held not applicable.**

D *Adivasi Gowari Samaj Sanghatan, Maharashtra and Anr. v. Union of India and Ors.***Decision dtd. 04.04.1996 of High Court of Bombay at Nagpr in Writ Petition No.1691 of 1990 – referred to.**

Tribes and Castes of the Central Provinces of India **by R. V. Russell and Rai Bahadur Hira Lal in which book**
E **in Volume III – referred to.**

Case Law Reference

[2000] 5 Suppl. SCR 65	**followed**	**Para 12**
F **[1965] SCR 316**	**followed**	**Para 21**
[1965] SCR 877	**followed**	**Para 47**
[1990] SCR 576	**relied on**	**Para 49**
[1993] 3 Suppl. SCR 872	**relied on**	**Para 51**
G **[1994] 3 Suppl. SCR 50**	**relied on**	**Para 52**
[1996] 2 SCR 1	**relied on**	**Para 53**
[2006] 2 SCR 1142	**held not applicable**	**Para 89**

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4096 of 2020.

From the Judgment and Order dated 14.08.2018 of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 1742 of 2007.

With

Civil Appeal No.4098-4100, 4097, 4101 of 2020.

Sanjay Jain, ASG, Shyam Divan, C.U. Singh, Mukul Rohatgi, Sr. Advs., Siddheshwar N. Biradar, Vinayak Bhandari, Ms. Sakshi Ajit Kale, Ravindra Keshavrao Adsure, Yash Prashant Sonavane, Jaiprakash Babasaheb Chavan, Ms. Sangita Sagar Pahune Patil, Mohan Sudame, Ms. Sangita Gupta, Amjid Maqbool, Manish Kumar Gupta, Mohammed Akhil, Ms. Sansriti Pathak, Raj Bahadur, Amrish Kumar, Ram Parsodkar, Shakul R. Ghatole, Siddharth Dharmadhikari, Ms. Jaikriti S. Jadeja, Ms. Astha Sharma, Abhay Anturkar, Ms. Aagam Kaur, Abhikalp Pratap Singh, Ms. Bansuri Swaraj, Siddhesh Kotwal, Divyansh Tiwari, Ms. Ana Upadhyay, Nirnimesh Dube, Sachin Patil, Gagan Sanghi, Rameshwar Prasad Goyal, Sudhanshu S. Choudhari, Kunal Cheema, Ms. Ruchita Kunal Cheema, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. These appeals filed against the common judgment dated 14.08.2018 of Bombay High Court, Nagpur Bench raise the issues of seminal importance pertaining to a Scheduled Tribe namely "Gond Govari" in the State of Maharashtra included in the Constitution (Scheduled Tribes) Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 as applicable in the State of Maharashtra.

3. The Bombay High Court vide judgment dated 14.08.2018 allowed four writ petitions being Writ Petition No. 1742 of 2007, Writ Petition No.4779 of 2008, Writ Petition No. 4032 of 2009 and Writ Petition No.1680 of 2012. We may notice in brief the claim of the writ petitioners in the aforesaid writ petitions.

Writ Petition No.1742 of 2007 - Keshao Vishwanath Sunone Vs. State of Maharashtra and Ors.

4. Keshao Vishwanath Sunone (hereinafter referred to as "Sunone") claimed himself to belong to Gowari caste. The petitioner's claim in the writ petition is that Sunone belong to Gowari caste, which comes under the Scheduled Tribes as there is no Gond Govari caste in existence. Sunone was appointed as Technical Assistant on 29.08.1983. The caste certificate of Gond Govari Scheduled Tribe was issued to Sunone on 03.07.1986. The caste certificate of Sunone was sent for verification of caste. The Caste Scrutiny Committee vide its order dated 13.01.2007 invalidated the caste certificate of Sunone. Challenging the order of Caste Scrutiny Committee dated 13.01.2007, writ petition was filed with following prayers:-

"a) issue appropriate writ, order or directions thereby quash and set aside an order passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati dated 13.1.2007;

b) stay and effect and operation of the impugned order dated 13.1.2007 passed by the Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati during the pendency of this petition and to protect the services of the petitioners;

c) grant any other relief as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

Writ Petition No.4779 of 2008 - Adivasi Gond Govari (Gowari) Sewa Mandal through its President Vs. State of Maharashtra and Ors.

5. The writ petitioner claimed to be an association working for the welfare of people belonging to Gond Govari community. The petitioner association had filed a writ petition questing the caste validity certificate issued to respondent Nos.4 to 19 as Scheduled Tribe (Gond Govari). Petitioners' case was that without conducting an enquiry, the caste validity certificate was issued. The petitioners' case further was that the validity certificate issued as Gond Govari Scheduled Tribe was wrongly issued since the respondents belonged to Gowari community and they did not belong to Gond Govari community.

6. In the writ petition, the petitioner has prayed for quashing the caste validity certificates issued to respondent Nos.4 to 19. A further direction was sought that Caste Scrutiny Committee, Nagpur not to issue caste validity certificate pertaining to Gond Govari Scheduled Tribe and the detailed inquiries be conducted. It was further prayed that Commissioner, Tribal Research and Training Institute, Pune and Caste Scrutiny Committee Nagpur be directed to conduct full place enquiry in the relation to Gowari and Gond Govari entries.

Writ Petition No.4032 of 2009 - Adim Gowari Samaj Vikas Mandal and Ors. Vs. State of Maharashtra and Anr.

7. The petitioner association registered in 2004 claimed to be working in the field of betterment and welfare of members of people belonging to Gowari community. In the writ petition, reference was made to the Government Resolution dated 24.04.1985, whereby the Government issued guidelines for taking precautionary measures while issuing the tribe certificate. Alongwith the Government Resolution, a chart was issued containing a comparative study, which relate to members of actual Scheduled Tribes and other castes having similar nomenclature. The writ petition contains a detailed reference to a subsequent Government Resolution dated 15.06.1995 where under the Government Resolution of the State of Maharashtra, Gowari was treated to be other backward community, special backward class with 2% reservation. In the writ petition, validity of the Government Resolution dated 24.06.1985 prescribing the guidelines by way of affinity test to claim the Gowari community was challenged.

Writ Petition No.1680 of 2012 - Adiwasi Gond Govari (Gowari) Seva Mandal Vs. Union of India & Ors.

8. By notification dated 16.06.2011 issued by the Government of India, Gowari community was included in the other backward class category from common Central List in respect of State of Maharashtra. The writ petitioner claimed that Gowari community and its members have been included in Entry No.18 of the Scheduled Tribes order in relation to State of Maharashtra. The direction was sought to instruct the Sub-Divisional Magistrate to issue the caste certificates to the persons belonging to Gowari community as Scheduled Tribes. The writ petitioner has also challenged the Government Resolutions dated 24.04.1985, 13.06.1995 and 15.06.1995. In the writ petition, following prayers were made:-

A "(a) issue appropriate writ, order or direction in the nature of mandamus thereby quash and set aside impugned Gazette Notification dated 16.06.2011 (Annexure No.9) issued by Government of India as unconstitutional as regards Gowari community and further delete the entry of Gowari community from the common central list of OBC category in respect of
B State of Maharashtra;

(b) by issuance of appropriate writ, order or direction remove the anamoly from the Entry 18 of Para 19 of the Scheduled Castes and Scheduled Tribes Order, 1976 as regards Gond Gowari community;
C

(c) by issuance of appropriate writ, order or direction declare that the Gowari community and its members have been included in the Entry 18 of Para 19 of Scheduled Castes and Scheduled Tribes Order, 1976;

D (d) by issuance of appropriate writ, order or direction in the nature mandamus direct the State Government and instruct Sub Divisional Offices, Magistrates throughout the State to issue caste certificates to the people belonging to Gowari community being Scheduled Tribe category people and further direct Cast Scrutiny Committee to issue validity certificates
E to Gowari Community people being Scheduled Tribe;

(e) issue appropriate writ, order or direction in the nature of mandamus, thereby quash and set aside the Govt. Resolution, dt.24.4.1985, 13.6.1995, & 15.6.1995 being illegal, at Annexure Nos.10, 11 &. 12;
F

(f) grant any other relief which may be deemed fit and proper in the facts and circumstances of the case."

9. The Division Bench vide its impugned judgment dated 14.08.2018 allowed the writ petitions by following order:-

G **"ORDER**

(1) We hold and declare that the tribe Gond Gowari was completely extinct before 1911 and no trace of it was found either in the Maratha Country of C.P. and Berar or in the State of Madhya Pradesh prior to 1956.

H

(2) We hold and declare that there did not exist any tribe as Gond Gowari as on 29-10-1956, i.e. the date of its inclusion as 28th Item in Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra and it was Gowari community alone shown as Gond Gowari, therein.

(3) The tribe Gond Gowari shown as 28th Item in Entry No. 18 of the said Order is not a sub-tribe of Gond and, therefore, the claim for its validity cannot be tested on the basis of the guidelines in respect of affinity test specified in the Government Resolution dated 24-4-1985.

(4) The people belonging to Gowari community in the State of Maharashtra cannot be denied the benefits of the Scheduled Tribes, merely because the Gowari community is shown in the list of Special Backward Classes in relation to the State of Maharashtra in the Government Resolutions dated 13-6-1995 and 15-6-1995 and as Other Backward Class category in the Gazette Notification dated 16-6-2011 issued by the Government of India in the common Central list in respect of the State of Maharashtra.

(5) The order dated 13-1-2007 passed by the Scheduled Tribes Certificate Scrutiny Committee at Amravati, invalidating the claim of the petitioner-Keshao s/o Vishwanath Sonone in Writ Petition No. 1742 of 2007, is hereby quashed and set aside. The said matter is remanded back to the Scrutiny Committee to decide it afresh in the light of the decision of this Court.

(6) We direct the Registry of this Court to get the entire old record of Census Reports, Parliamentary Debate, Gazetteers, etc., called for the purposes of these petitions from the Library, scanned, within a period of six weeks, as it has worn out. The record is very important and it needs to be preserved, as it is also not available on the 'Net'."

10. Aggrieved by judgment of the Division Bench, the State of Maharashtra has filed Civil Appeals arising out of SLP (C) No.15044 of 2020 and SLP (C) Nos. 15045-15047 of 2020. Union of India has also filed Civil Appeal arising out of Diary No.17886 of 2020 as well as one Zanaklal Bhaisaku Mangar, who was respondent No.15 in Writ Petition No.4779 of 2008 filed by Adivasi Gond Govari (Gowari) Sewa Mandal has filed SLP (C) No.7901 of 2019 in this Court.

A 11. We have heard Shri Shyam Divan, learned senior counsel, Shri Ravindra Keshavrao Adsure, learned counsel for the appellant, State of Maharashtra. Shri Sanjay Jain, learned Additional Solicitor General for the appellant, Union of India and Shri C.U. Singh, learned senior counsel for the appellnt-Zanaklal Bhaisaku Mangar. Shri Mukul Rohatgi, learned senior counsel has appeared for the respondents. We have also heard Ms. Bansuri Swaraj, learned counsel for the respondents and other learned counsel.

12. Shri Shyam Divan, learned senior counsel submits that the High Court committed error in tinkering with the Entries under the Constitution (Scheduled Tribes) Order, 1950 which could only be done by a Parliamentary Act as per constitutional provision of Article 342 sub-clause (2). A detailed procedure is to be followed to amend Constitution (Scheduled Tribes) Order, 1950 which could not have been done by the High Court as has been done in the impugned judgment. It is submitted that Constitution Bench in **State of Maharashtra Vs. Milind and Ors., (2001) 1 SCC 4** has held that Entries in Constitution (Scheduled Tribes) Order, 1950 can only be amended by an Act of Parliament under Article 342(2) and State Governments or Courts or other Authorities or Tribunals cannot hold inquiry so as to see whether any caste should be considered as included in Constitution (Scheduled Tribes) Order, 1950, where it is not specifically mentioned in the same.

13. Shri Divan submits that Scheduled Tribe, namely, 'Gond Gowari' which is included in Entry 18 of Part-IX of Constitution (Scheduled Tribes) Order, 1950 do exist and is clearly different from caste 'Gowari'. The High Court was in error in holding that Tribe 'Gond Gowari' is an extinct Tribe which is not in existence after 1911. The Entry 'Gond Gowari' being maintained in Constitution (Scheduled Tribes) Order, 1950 and was not deleted even after several Parliamentary Acts were passed to amend the Constitution (Scheduled Tribes) Order, 1950. The High Court clearly erred in holding that Scheduled Tribe 'Gond Gowari' is not in existence when the caste was included in Constitution (Scheduled Tribes) Order, 1950.

14. Shri Divan submits that Anthropological Expert Report which was on record before the High Court also clearly stated that 'Gond Gowari' is a Scheduled Tribe which is different with 'Gowari'. The caste 'Gowari' has close affinity with 'Yadav' and 'Ahir' whereas 'Gond Gowari' has affinity with 'Gond'. Both are different in its culture and

customs. Shri Divan has also placed reliance on the report submitted by the Tata Institute of Social Sciences, Mumbai dated 29.12.2020 on "Socio-Anthropological Study of Gowari Community of Maharashtra". He submits that in the report after considering all aspects including field visits by research team at different places had found two communities, i.e., 'Gond Gowari' and 'Gowari' different in customs, worship and settlement. The report submits that 'Gond Gowari' is sub-Tribe of 'Gond' whereas 'Gowari' are cattle graziers. It is submitted that there have been several attempts by 'Gowari' to obtain status of Scheduled Tribes by including them within the List of Scheduled Tribes through Parliamentary enactment and 'Gowaris' having failed in all their attempts, have filed the writ petitions for seeking declaration which could not have been granted by a Court of law. The High Court entered into the evidence to come to the finding that the Tribe 'Gond Gowari' was completely extinct before 1911 which exercise could not have been undertaken in writ petitions. There are other materials on records which clearly proved the presence of 'Gond Gowari' before and after 1956 and even as on date and the High Court committed error in holding that the Tribe 'Gond Gowari' was completely extinct before 1911.

15. It is submitted that 'Gowari' has already been declared as Special Backward Class by the State Government by Resolutions dated 13.06.1995 and 15.06.1995 and also included in the category of other Backward Classes by Government of India notification dated 16.06.2011. The benefit of Resolution has already been availed by 'Gowari' and the fact that they have been recognised as Special Backward Class and other Backward Class category by the State of Maharashtra and Government of India respectively is indicative of fact that they are not Scheduled Tribes but are belonging to other Backward Class.

16. Shri Shyam Divan has also relied on the Division Bench judgment of the High Court of Bombay at Nagpur dated 04.04.1996 delivered in **Writ Petition No.1691 of 1990 - Adivasi Gowari Samaj Sanghatan, Maharashtra and Anr. Vs. Union of India and Ors.,** where a writ petitioner claiming Scheduled Caste status by 'Gowari' community was rejected by the Division Bench approving the action of authority in examining the affinity of the writ petitioner with the main Tribe 'Gond'. Shri Divan submits that there being a Division Bench judgment rejecting the claim of Gowari which was a judgment of co-ordinate Bench, the High Court in the impugned judgment could not have taken a contrary view.

17. Shri Sanjay Jain, learned Additional Solicitor General in support of the appeal filed by the Union of India contends that the High Court failed to appreciate that list of Scheduled Tribes in relation to a State which is notified by the order of the President after consultation with the State can be modified only through an Act by the Parliament in consultation with the State Government. The High Court in the impugned judgment has substituted its own opinion in place of the opinion of the Parliament which is not permissible in law.

18. Shri C.U. Singh, learned senior counsel for the appellant submits that the High Court committed an error in holding that 'Gond Gowari' are extinct. It is submitted that the High Court has ignored the Parliamentary Committee's proceedings and studies on the subject. Shri C.U. Singh specifically referring to the Statement of Objects and Reasons to the "The Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1976" submits that only those communities were excluded who were not found in a State in the return of Census of 1961 and 1971. He submits that the fact that 'Gond Gowari' was retained and was not excluded by the Amendment Act, 1976 clearly points out that the Parliament was satisfied with the existence of 'Gond Gowari'. Shri Singh also referring to Article 338A of the Constitution which has been inserted by the Constitution (Eighty-Ninth Amendment) Act, 2003 submits that National Commission for the Scheduled Tribes having been constituted which is empowered to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes, without reference to National Commission for the Scheduled Tribes, it was not open for the writ petitioners to file a writ petition for claiming the status of Scheduled Tribes.Shri C.U. Singh further, submits that in the writ petition filed before the High Court there was no specific plea that Gond Gowari was extinct.

19. Shri Ravindra Keshavrao Adsure, learned counsel adopting the submissions of Shri Shyam Divan submits that 'Gowari' had made several attempts to obtain the benefits of Scheduled Tribes and they having failed in all their attempts have filed the writ petitions to obtain a declaration from the Court of Law regarding their status as Scheduled Tribes which is not permissible in law.

20. Shri Mukul Rohatgi, learned senior counsel appearing for the respondents supporting the judgment of the High Court contends that it was open for the High Court to find out the true meaning and contents

of Entry 'Gond Gowari' as included in the Constitution (Scheduled Tribes) Order, 1950. He submits that insofar as Government Resolutions declaring the 'Gowari' as Special Backward Class and other Backward Class, the said Resolutions and notifications were challenged by the writ petitioners in their writ petitions. They never wanted the benefit of Special Backward Class or other Backward Class. The High Court has rightly restored the benefit of Scheduled Tribes 'Gowari' to which they were entitled in law. Shri Rohatgi submits that the High Court did not commit error in entering into an issue and returning a finding that 'Gond Gowari' was extinct before 1911. When 'Gond Gowari' was extinct before 1911 it was the 'Gowari' who were entitled to be treated as Scheduled Tribes in the Entry 18. It was fully permissible for the High Court to find out as to whether any Tribe named 'Gond Gowari' is in existence or not and who are the true 'Gond Gowari' entitled for the benefit of the Scheduled Tribes.

21. Shri Rohatgi submits that 'Gond Gowari' was a small hybrid caste by alliance of Gond and Gowari, in 1911 Gond Gowari were completely amalgamated with the Tribe Gowari. It is submitted that in fact there is no Tribe of "Gond Gowari" and it is in fact Gowari which was included in the Constitution (Scheduled Tribes) Order, 1950. He submits that for Gowari to recognise as Scheduled Tribes there is no necessity of showing any affinity with Gond. He submits that by the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, the word including "Gond Gowari" as occurring in Entry 12 was substituted by Entry 18 by deleting word Gond which clearly means that all Tribes mentioned in the Entry 18 are independent Tribes with having no affinity with Gond. He submits that the State of Maharashtra right from 1967 has been taking the stand that Gowari be included as separate category of Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950, the State cannot suddenly take a U-turn and start denying the claim of Gowari to be Scheduled Tribe. Shri Rohatgi submits that the High Court has referred to a host of materials considered in the judgment for coming to the conclusion that Tribe Gond Gowari became extinct prior to 1911. The exercise undertaken by the High Court is in consonance with the law laid down by the Constitution Bench in **B. Basavalingappa Vs. D. Munichinnappa and Ors., AIR 1965 SC 1269**. He submits that before the High Court it does not make any difference whether the claim that Gond Gowari were extinct before 1911 was admitted or disputed, even it is disputed, the High Court had to find out truth to clear

A the confusion after looking into the evidence on record. He submits that the High Court has referred to the Census Reports and has rightly found out that after 1911 in subsequent Censuses held that it was only Gowari who were found present. Gond Gowari being surplusage the claim was raised for substitution of Gond Gowari with Gowari. It is submitted that it is the Gowari who were found present in Census after 1911 and it were Gowari who were entitled to be treated as Scheduled Tribes and Gowari being not a sub-caste of Gond they were not required to prove any affinity with Gond and the Resolution dated 24.04.1985 of the State of Maharashtra requiring affinity to be proved was not in accordance with law. Shri Rohatgi submits that it is actually Gowari who have been C given certificate of Scheduled Tribes. He submits that there are no competitive claims of Gond Gowari, there being no Tribe of Gond Gowari in existence as of now.

22. Shri Rohatgi further submits that ratio of Constitution Bench in **State of Maharashtra Vs. Milind and Ors.** is not in accord with the D ratio of earlier Constitution Bench in **B. Basavlingappa**. There being conflict between the ratio of two Constitution Benches, the matter needs to be referred to a larger Constitution Bench for resolving the conflict. Shri Rohatgi lastly submits that after the judgment of Division Bench dated 14.08.2018, Scheduled Tribes' certificates were issued on the basis of which admissions/employment have been undertaken by members of E Gowari community which benefit needs to be protected by this Court.

23. Ms. Bansuri Swaraj, appearing for the respondents submits that Gond Gowari community was short-lived and it got extinct completely prior to the Census of 1911. There did not exist any Tribe named 'Gond Gowari' as on 29.10.1956, i.e., the date of its inclusion in Entry No.18 of F the Constitution (Scheduled Tribes) Order, 1950. **It is submitted that Gowari community alone which was shown as 'Gond Gowari'.** Reliance has also been placed on book titled "Castes and Tribes of the Central Provinces of India" by Russell and Hira Lal. It is submitted that first Backward Classes Commission under the Chairmanship of G Kakasaheb Kalelkar had recommended Gowari under the Sub-group/ Sub-tribes 'Gond' group, which was to be added with Gond, **but by some mistake** instead of Gowari, Gond Gowari was included in the Entry in the **Scheduled Castes and Scheduled Tribes Lists (Amendment) Bill, 1956**. Although amendment was supposed to be made as Gowari to be added with Gond but was erroneously made as H Gond Gowari. It is submitted that in the year 1965, the Chief Minister of

Maharashtra had discussed with the Advisory Committee and it was recommended that the Gowari Tribe be added as a separate Tribe by deleting the Entry of Gond Gowari. The State of Maharashtra having taken a stand that Gowari be included as separate Entry in the Scheduled Tribes, there is a legitimate expectation in the Gowari community. After the judgment of the High Court, the Revenue Minister of the State has made a statement that High Court judgment shall be implemented which stand has subsequently been changed.

24. Learned counsel for the parties have placed reliance on the various judgments of this Court which shall be referred to while considering the submissions in detail.

25. Before we enter into the respective submissions of learned counsel for the parties, it is relevant to notice the relevant constitutional provisions as well as the Constitution (Scheduled Tribes) Order, 1950 amended from time to time and other relevant statutory provisions.

26. Part XVI of the Constitution deals with "Special Provisions relating to certain classes". Article 342 of the Constitution deals with Scheduled Tribes, which is to the following effect:-

> **"342. Scheduled Tribes—**(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be
>
> (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

27. Article 366(25) defines Scheduled Tribes in following words:-

> "**366. Definitions.—** In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—
>
> XXXXXXXXXXXXX

A (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;

XXXXXXXXXXXXXXXX"

B 28. In exercise of power under Article 342, the President had issued the Constitution (Scheduled Tribes) Order, 1950 dated 06.09.1950. Paragraphs 2 and 3 of the Order states:-

"**2.** The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XIV 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 that Schedule.

D **3.** Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construed as a reference to that district or other territorial division as existing on the 26th January, 1950."

29. The Schedule contains details of Scheduled Tribes with E reference to different States. Part III to the Schedule deals with the State of Bombay and Entry No.9 of Part III mentioned "9. Gond". Part IV dealt with Madhya Pradesh where also Entry No.12 mentions "Gond [including Madia (Maria) and Mudia (Muria)]". The Parliament passed an Act namely, The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 to provide for the inclusion in, and the exclusion F from the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes and matters connected therewith. AS per Section 4 of the Act, 1956, Constitution (Scheduled Tribes) Order, 1950 was amended in the manner and to the extent as specified in Schedule III. In Schedule III, Entry No.9 was substituted by following Entry:-

G "9. Gond or Rajgond."

30. Part IV which deals with Madhya Pradesh, Entry 12 was substituted by following entry:-

"12 Gond, including-

H

Arakh or Arrakh
Agaria
Asur
Badi Maria or Bada Maria
Bhatola
Bhimma
Bhuta, Koilabhuta or Koilabhuti
Bhar
Bisonhorn Maria
Chota Maria
Dandami Maria
Dhuru or Dhurwa
Dhoba
Dhulia
Dorla
Gaiki
Gatta or Gatti
Gaita
Gond Gowari
Hill Maria
Kandra
Kalanga
Khatola
Koitar
Koya
Khirwar or Khirwara
Kucha Maria

A Kuchaki Maria

Madia (Maria)

Mana

Mannewer

B Moghya or Mogia or Manghya

Mudia (Muria)

Nagarchi

Nagwanshi

C Ojha

Raj

Sonjhari Jhareka

Thatia or Thotya

D Wade Maria or Vade Maria"

31. It is to be noticed that amendment to the Scheduled Tribes with respect to Madhya Pradesh was consequent to recommendations by the report of the Backward Classes Commission also known as Kalelkar Commission. With regard to Madhya Pradesh with regard to list of Scheduled Tribes published in Constitution (Scheduled Tribes) Order, 1950 together with the revision suggested by the Backward Classes Commission is included in volume II of the Report. Entry No.12 in the List of the Scheduled Tribes was with respect to Gond [including Madia (Maria) and Mudia (Muria)]. Backward Classes Commission suggested addition of several sub-tribes of Gond with Gond. Column No.VI of the Table contains heading "Commission's recommendation for inclusion". Item No.10 in Column No.6 is to the following effect:-

E

F

"10. Sub-Tribes of Gond : (to be added with Gond) Arakh or Arrakh

G Agaria

Asur

Bhatola

Bhimma

H Bhuta or Keliabhuta or Koilabhuti

Bhar	A
Dhuru or Dhurwa	
Dhoba	
Dhulia	
Gatta or Gatti	B
Gaita	
Gaiki	
Ganda or Gandi	
Gowari	C
Kalanga	
Khatola	
Koitar	
Koya	D
Khirwar or Khirwara	
Moghya or Mogia or Monghya	
Nagarchi	
Ojha	E
Thatia or Thotya	
Raj	
Nagwanshi	F
Mannewar	
Dorla	
Mana	
Kandra	G
Bison horn Miria	
Hill Maria	
Badi Maria or Bada Maria, Chota Maria,	
Dandami Maria	H

A Kuchaki Maria

Kucha Maria

Wade Maria or Vade Maria"

32. The States Reorganisation Act, 1956 was enacted by B Parliament to provide for the reorganisation of the States of India and for matters connected therewith. Section 8 provided for formation of a new Bombay State. By virtue of Section 8(1)(c) following districts, which then existed in the State of Madhya Pradesh were included in the new Bombay State, which is to the following effect:-

C "**8. Formation of a new Bombay State.** – (1) As from the appointed day, there shall be formed a new State to be known as the State of Bombay comprising the following territories, namely:–

XXXXXXXXXXXX

(c) Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara D and Chanda districts in the existing State of Madhya Pradesh;

XXXXXXXXXXXX"

33. The above districts were earlier part of the State of Madhya Pradesh. Section 41 of the States Reorganisation Act provide for E modification of the Scheduled Castes and Scheduled Tribes Orders with regard to territorial changes and formation of new States under the provisions of Part II. In exercise of power under Section 41 of the States Reorganisation Act, Scheduled Castes and Scheduled Tribes Lists modification under Order 1950 was issued dated 29.10.1956. Part IV of the Schedule dealt with Bombay. Schedule III contains the modification F to the Constitution (Scheduled Tribes) Order, 1950. Part IV of the Schedule dealt with Bombay. Although, Entry No. 9 continued as Gond or Rajgond but with regard to certain Tehsils of Districts Amrawati, Chanda and Yeotmal, Entry No.12 alongwith Entry of Gond following was included:-

G "**7.** In (1) Melghat tahsil of the Amravati District,

(2) Gadchiroli and Sironcha tahsils of the Chanda District,

(3) Kelapur, Wani and Yeotmal tahsils of the Yeotmal District:-

H XXXXXXXXXXXX

12. Gond, including:-
Arakh or Arrakh
Agaria
Asur
Badi Maria or Bada Maria
Bhatola
Bhimma
Bhuta, Koilabhuta or Koilabhuti
Bhar
Bisonhorn Maria
Chota Maria
Dandami Maria
Dhuru or Dhurwa
Dhoba
Dhu1ia
Dorla
Gaiki
Gatta or Gatti
Gaita
Gond Gowari
Hill Maria
Kandra
Kalanga
Khatola
Koitar
Koya”

34. We, thus, notice that after recommendation of Backward Classes Commission for the State of Madhya Pradesh by virtue of Act, 1956, with the tribe "Gond" "Gond Govari" was added as the Scheduled Tribes by modification order dated 29.10.1956. With respect to State of Bombay in specific areas, with regard to entry of Gond as Scheduled Tribe, several sub-tribes including "Gond Govari" was added as noticed above.

35. The Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) to provide for the inclusion in, and the exclusion from the list of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the re-adjustment of representation of parliamentary and assembly constituencies in so far as such re-adjustment is necessitated by such inclusion or exclusion and for matters connected therewith. The Statements of Objects and Reasons of the Bill is relevant, which is to the following effect:-

"**STATEMENT OF OBJECTS AND REASONS**

Under the Scheduled Castes and Scheduled Tribes Orders some communities have been specified as Scheduled Castes or as Scheduled Tribes only in certain areas of the State concerned and not in respect of the whole State. This has been causing difficulties to members of these communities in the areas where they have not been so specified. The present Bill generally seeks to remove these area restrictions. However, in cases where continuance of such restrictions were specifically recommended by the Joint Committee on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967, no change is being effected. The Committee had also recommended exclusion of certain communities from the lists of Scheduled Castes and Scheduled Tribes. These exclusions are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that they were not found in a State are, however, being excluded if there were no returns in respect of these communities in the censuses of 1961 and 1971.

2. The proposed amendments in the lists of Scheduled Castes and Scheduled Tribes may lead to an increase in the

population of these Castes and Tribes and consequently in the number of reserved seats in the Lok Sabha and certain State Legislative Assemblies. Provisions have therefore been made in the Bill to empower the census authority to re-estimate the population of the Scheduled Castes and the Scheduled Tribes and the Election Commission to reallocate the reserved constituencies."

36. The second Schedule of the Act, 1976 provides for substitution in Constitution (Scheduled Tribes) Order, 1950 as indicated therein. With regard to State of Maharashtra, which was formed, Part IX of the Second Schedule, Entry No.18 deals with Scheduled Tribe "Gond", which is to the following effect:-

"18. Gond Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria. Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatala, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria"

37. Subsequent to above, the Parliament passed the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002, the preamble of which is to the following effect:-

"An Act to provide for the inclusion in the lists of Scheduled Tribes, of certain tribes or tribal communities or parts of or groups within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of area restrictions and bifurcation and clubbing of entries; imposition of area restriction in respect of certain castes in the lists of Scheduled Castes, and the exclusion of certain castes and tribes from the lists of Scheduled Castes and Scheduled Tribes, in relation to the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal."

38. The only amendment which was made with respect to Schedule pertaining to Maharashtra in Entry 18 was to the following effect:-

A "(i) in Part IX – Maharashtra—

(i) omit entry 12;

(ii) in entry 18 for "Gond Rajgond" substitute "Gond, Rajgond";

(iii) omit entry 45;"

B 39. The above amendment in the Scheduled Castes order indicate the care which was taken by the legislature in describing the Scheduled Tribes entries. By the above amendment in earlier Entry No.18 of "Gond Rajgond", substitution was made by which now it is read as "Gond, Rajgond".

C 40. From the submissions of learned Counsel for the parties and materials on record, following questions arise for consideration: -

1) Whether the High Court in the writ petition giving rise to these appeals could have entertained the claim of the caste "Gowari", which is not included as Scheduled Tribe in the
D Constitution (Scheduled Tribes) Order, 1950, that it be declared a Scheduled Tribe as "Gond Govari" which is included at Item No.18 of Constitution (Scheduled Tribes) Order, 1950 applicable in the State of Maharashtra and further to take evidence to adjudicate such claim?

E 2) Whether the ratio of the judgment of the Constitution Bench of this Court in **B. Basavalingappa Vs. D. Munichinnappa, AIR 1965 SC 1269** permits the High Court to take evidence to find out whether 'Gowari' are 'Gond Gowari' and is there any conflict in ratio of judgment
F of Constitution Bench in **B. Basavalingappa** and subsequent Constitution Bench judgment of this Court in **State of Maharashtra Vs. Milind, (2001) 1 SCC 4?**

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

4) Whether the conclusion of the High Court in the impugned judgment that 'Gond Gowari' Tribe was extinct before 1911 is supported on the materials which were on record before
H the High Court?

5) Whether caste 'Gowari' is same as 'Gond Gowari' included at Item No.28, Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 and the High Court could have granted declaration to caste 'Gowari' as 'Gond Gowari' entitled for Scheduled Tribe certificate?

6) Whether the High Court is correct in its view that 'Gond Gowari' shown as Item No.28 in Entry 18 of **the Constitution (Scheduled Tribes) Order, 1950** is not a sub-tribe of Gond, hence, its validity cannot be tested on the basis of affinity test specified in Government Resolution dated 24.04.1985?

Question Nos. 1 and 2

41. The Constitution of India contains ample provisions for fulfilment of the Constitutional aspirations of social justice to the Scheduled Castes and Scheduled Tribes and to socially and educationally backward classes of citizens. Articles 341 and 342 and Part XIV of the Constitution contains several provisions as special provisions relating to certain classes. Article 342 of the Constitution envisages public notification specifying the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall be for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to a State after consultation with Governor thereof. Sub-clause (2) contains another important provision which provides that any inclusion or exclusion from the list of Scheduled Tribes specified in a notification issued under clause (1) of Article 342 can be done only by Parliament by law. Sub-clause (2) of Article 342, thus, contains a provision conferring authority only to the Parliament to include and exclude a Scheduled Tribe in the list as specified in the sub-clause (1) of Article 342. There has been a series of judgments of this Court including Constitution Benches on Articles 341 and 342 as well as entries in Scheduled Castes and Scheduled Tribes Order, 1950. This Court had occasion to consider as to what extent the Courts including the High court and this Court could interpret the entries in Scheduled Castes and Scheduled Tribes Orders. The High Court has heavily relied on Constitution Bench judgment of this Court in **B.Basavalingappa Vs. D. Munichinnappa and Ors., AIR 1965 SC 1269**.

42. We may first notice the above judgment. An Election Petition was filed challenging the election of respondent No.1 on the ground that

A respondent No.1 not being member of any Scheduled Castes mentioned in Constitution (Scheduled Castes) Order, 1950 could not have contested the election from Scheduled Caste Constituency. The respondent claimed that he belongs to a Scheduled Caste listed as Bhovi in the Order. the appellant's case was that respondent No.1 was a Voddar by caste, which was not a Scheduled Caste. The Election Tribunal held that the caste B mentioned as Bhovi in the Scheduled Castes Order was a sub-caste amongst the Voddars and the entire Voddar caste not being included as Scheduled Caste, the respondent No.1 was ineligible. The election was set aside. On appeal, High Court held that Voddars caste as such was not included in the Order, but considering the facts and circumstances in C existence at the time when the Order was passed in 1950, the Bhovi caste mentioned therein was no other than Voddar caste. The High Court allowed the appeal, against which judgment, appeal was filed in this Court. The Constitution Bench of this Court speaking through Wanchoo, J. held that it is not open to make any modification in the Order by producing evidence to show that though caste A alone is mentioned in D the Order, caste B is also a part of caste A. The ratio of the judgment is clearly discernible from paragraph 6 of the judgment, which is to the following effect:-

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

43. After noticing the above preposition in paragraph 6, this Court noticed the peculiar circumstances of the case where in the Mysore State as it was before reorganisation of 1956, there was no caste known as Bhovi at all. This Court, however, further emphasised that "if there H

was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste". In the above case, this Court, however, further held that when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State and when one finds mentioned in the Order, one has to determine which was the caste which was meant. In paragraph 7 of the judgement, following has been laid down:-

> "**7.** But that in our opinion does not conclude the matter in the peculiar circumstances of the present case. The difficult in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all. The Order refers to a Scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the order, when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which casts was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this Peculiar circumstance, therefore, which necessitated the taking of evidence to determine which was the caste which was meant by the word 'Bhovi' used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956."

44. Shri Rohatgi, learned senior counsel appearing for the appellant has placed much reliance on paragraph 7 of the judgment and has

A contended that this Court approved the exercise undertaken by the High Court to find out which was the Bhovi caste, which was included in the Constitution (Scheduled Castes) Order, 1950, hence, an evidence was rightly looked into by the High Court, which received approval by this Court. Shri Rohatgi further submits that although in the **B. Basavalingappa's case** the factum that there was no caste in the Mysore B State before reorganisation known as Bhovi at all was not disputed but the fact that whether it is disputed or not disputed shall not make any difference, whenever the issue is raised that has been answered by the Courts looking into the evidence.

C 45. The observations made by this Court in paragraph 7 in no manner dilutes the ratio of the judgment as laid down in paragraph 6 quoted above. This Court approved the High Court exercise of looking into the evidence to determine which was the caste which was meant by the word "Bhovi" in the Order in the peculiar circumstances of the case where the fact was not disputed that there was no caste known as D Bhovi in the Mysore State before 1956. In paragraph 7, these following two observations made by this Court are in full accord with the ratio as laid down in paragraph 6, they are:-

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

F 46. In the present case, the case of the respondent in the writ petition was categorical that Gond Gowari was a caste which was in existence since before 25.09.1956. Even the High Court in the impugned judgment has said that caste Gond Gowari did not exist prior to 1956 rather the High Court held that caste was there but it became extinct prior to 1911. Thus, the circumstances in which this Court in **B.** G **Basavalingappa's case** approved the looking of the evidence were peculiar to that case and has no application in the facts of the present case.

47. We may notice another Constitution Bench judgment in **Bhaiya Lal Vs. Harikishan Singh and Ors., AIR 1965 SC 1557,** which was H delivered few months after judgment of **B. Basavalingappa's case,**

noted the ratio of judgment and reiterated that though the appellant was not a Scheduled Caste as enumerated in the Scheduled Castes Order but he belonged to another caste, which is sub-caste of Scheduled Caste, cannot be looked into. In the above case, Bhaiya Lal was elected from reserved seat. Election was challenged on the ground that Bhaiya Lal belonged to Dohar caste and was not a Chamar. Bhaiya Lal in his nomination has declared that he was member of Chamar Scheduled Caste. Election Tribunal found against the elected candidate and set aside the election. The High Court dismissed the appeal. Bhaiya Lal questioned the judgment of the High Court as well as the Election Tribunal. The case of the appellant was that he was a Dohar Chamar, which is a sub-caste of Chamar Scheduled Caste. This Court held that the claim that Dohar caste is a sub-caste of Chamar caste cannot be entertained. in paragraph 8 following has been laid down:-

> **"8.** Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Article 341 of the Constitution. Article 341(1) provides that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races, or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Sub-article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. It is thus clear, that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the

A fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341. In the case of *B. Basavalingappa* v. *D. Munichinnappa* this Court had occasion to consider a similar question. The question which arose for decision in that case was whether Respondent 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be:

> "it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A."

That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted."

48. In **Bhaiya Lal's case**, the Constitution Bench reiterated the ratio of **B. Basavalingappa's case** in following words:-

> "it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A."

49. We may notice few more judgments of this Court where the law on the subject was explained and reiterated. In **Srish Kumar Choudhury Vs. State of Tripura and Ors., 1990 Supp SCC 220**, this Court had occasion to consider Article 342. In the above case, the appellant had filed an application in a representative capacity before the High Court claiming that he belonged to Laskar community, which has always been treated in the erstwhile State of Tripura as a Scheduled Tribe. The writ petition was dismissed by the High Court against which the appeal was filed. This Court referred to earlier two Constitution

Bench judgments in **B. Basavalingappa's case** and **Bhaiya Lal's case**. The observations made by the Constitution Bench in **B. Basavalingappa's case** and **Bhaiya Lal's case** were extracted in paragraphs 8, 9 and 10. In paragraph 9, Three Judge Bench quoted the extract from **Bhaiya Lal's** judgment and in paragraph 11, it was held that the ratio of judgment of **Bhaiya Lal's case** supports the view of earlier judgment of Constitution Bench in **B. Basavalingappa's case.** In paragraphs 10 and 11, following has been laid down;-

> **"10.** A similar dispute again came before a Constitution Bench in *Bhaiyalal* v. *Harikishan Singh, AIR 1965 SC 1557* with reference to a scheduled tribe in an election dispute. Gajendragadkar, C.J. speaking for the court said : (SCR pp. 882-83)
>
> > "It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State."
>
> **11.** What we have extracted above clearly supports the view of the other Constitution Bench, namely, the list is intended to be final."

50. The Three Judge Bench reiterated that Courts cannot enter into an enquiry to determine whether the three terms indicated in the

A Presidential Order include Deshi Tripura which covers the Laskar community. In paragraph 20, following was laid down:-

> **"20.** The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation.
B We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community;……"

This Court also reiterated that enquiry is contemplated before the
C Presidential Order is made.

51. The next judgment to be noticed is **Palghat Jilla Thandan Smudhaya Samrakshna Samithi and Anr. Vs. State of Kerala and Anr., (1994) 1 SCC 359**. In the above case, a writ petition was filed claiming that the petitioner belonged to Thandan community, therefore,
D a Scheduled Caste certificate be issued. The writ petition was allowed, however, the petitioner was denied admission in M.B.B.S. course in seat reserved for Scheduled Caste on the ground that she was not a Thandan. A Three Judge Bench of this Court after noticing the ratio of earlier two Constitution Bench judgments has held that the Court could not assume the jurisdiction and order an enquiry to determine whether
E the terms of the Presidential Order includes a particular community. In paragraphs 17 and 18, following was laid down:-

> **"17.** We may usefully draw attention to the judgment of a Bench of three learned Judges of this Court in *Srish Kumar Choudhury* v. *State of Tripura, 1990 Supp SCC 220*. This
F judgment considered the Constitution Bench judgments in *B. Basavalingappa* v. *D. Munichinnappa, AIR 1965 SC 1269* and *Bhaiyalal* v. *Harikishan Singh, AIR 1965 SC 1557* and certain other judgments. It held that the two Constitution Bench judgments indicated that any amendment to the Presidential Orders
G could only be by legislation. The Court could not assume jurisdiction and order an enquiry to determine whether the terms of the Presidential Order included a particular community. A State Government was entitled to initiate appropriate proposals for modification in cases where it was satisfied that modifications were necessary and, if after appropriate enquiry, the authorities

H

were satisfied that a modification was required, an amendment could be undertaken as provided by the Constitution.

18. These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid."

52. A Two Judge Bench in **Kumari Madhuri Patil and Anr. Vs. Addl. Commissioner, Tribal Development and Ors., (1994) 6 SCC 241** had occasion to consider the Constitution (Scheduled Tribes) Order, 1950 as applicable to State of Maharashtra. In Constitution (Scheduled Tribes) Order, 1950, caste "Mahadeo Koli" was included. The appellants claimed that they were entitled to Scheduled Tribe certificate of Mahadeo Koli whereas caste was shown in admission register as "Hindu Koli". The Scheduled Caste certificate was refused. A writ petition was filed in the High Court, which was dismissed against which the matter came to this Court. This Court held that Scheduled Caste notified was Mahadeo Koli and the petitioners being Hindu Koli were not entitled for the Scheduled Tribes certificate. In paragraph 9, following has been laid down:-

"**9. ……**It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status. The case in hand is a clear instance of such pseudo-status. Kolis have been declared to be OBC in the State of Maharashtra being fishermen, in that their avocation is fishing and they live mainly in the coastal region of Maharashtra. Mahadeo Kolis are hill tribes and it is not a sub-caste. Even prior to independence, the Maharashtra Government declared Mahadeo Koli to be criminal tribe as early as 29-5-1933 in Serial No. 15 in List II thereof. In 1942 Resolution in Serial No. 15 in Schedule B of the Bombay resolution Mahadeo Koli tribe was notified as a Scheduled Tribe. It was later amended

A as Serial No. 13. In the Presidential Scheduled Castes/Scheduled Tribes Order, 1950, it was reiterated. A slight modification was made in that behalf by the Presidential Notification dated 29-10-1956. In the 1976 Amendment Act, there is no substantial change except removing the area restriction. Thus Mahadeo Koli, a Scheduled Tribe continued to be a Scheduled Tribe even after independence. The Presidential Notification, 1950 also does recognise by public notification of their status as Scheduled Tribes. The assumption of the Division Bench of the Bombay High Court in *Subhash Ganpatrao Kabade case*[1], that Mahadeo Koli was recognised for the first time in 1976 under Amendment Act, 1976, as Scheduled Tribe is not relatable to reality and an erroneous assumption made without any attempt to investigate the truth in that behalf. Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of castes/tribes or sub-castes/parts of or groups of tribes or tribal communities is permissible."

53. A Three Judge Bench in **Nityanand Sharma and Anr. Vs. State of Bihar and Ors., (1996) 3 SCC 576** had also considered the similar question. The question which was up for consideration has been noted in paragraph 2 of the judgment to the following effect:-

> **"2.** Short but an important question of constitutional law of the power of the court to declare a particular tribe to be Scheduled Tribe under Scheduled Castes and Scheduled Tribes Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Orders (Amendment Act), 1976 (for short "the Act") is the primary question."

54. The petitioner in the above case belonged to Lohar community. They claimed Scheduled Tribe certificate. The State resisted the claim that Lohar in State of Bihar is recognised as Other Backward Class and not Scheduled Tribe. The entry in the Scheduled Tribe Order mentioned Lohara/Lohra. This Court held that the question which is up for consideration is no longer res integra and is covered by ratio of the Constitution Bench judgment in **Bhaiya Lal** and **B. Basavalingappa case.** In paragraphs 13 and 15, following was laid down:-

> **"13.** The question then is: Whether Lohars could be considered by the Court as synonyms of Loharas or Lohras? This question is

no longer res integra. In *Bhaiyalal* v. *Harikishan Singh*, AIR 1965 SC 1557 a Constitution Bench of this Court had considered in an election petition whether Dadar caste was a Scheduled Caste. It held that the President in specifying a caste, race or tribe has expressly been authorised to limit the notification to parts of or groups within the caste, race or tribes. It must mean that after examining the social and educational backwardness of a caste, race or a tribe, the President may come to the conclusion that not the whole caste, race or tribe, but parts of or groups within them should be specified as Scheduled Caste or Scheduled Tribe. The result of the specification is conclusive. Notification issued under Article 341(1), after an elaborate enquiry in consultation with the Governor and reaching the conclusion specifying particular caste, race or tribe with reference to different areas in the State, is conclusive. The same view was reiterated in *B. Basavalingappa* v. *D. Munichinnappa, AIR 1965 SC 1269*.

15. It is for Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste/ tribe etc. It would thus be clear that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted (*sic*) under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe."

55. Rejecting the claim of Lohar as Scheduled Tribe, following was laid down in paragraphs 18 and 20:-

"18. It is seen that in the Second Schedule in Part III of the Act, as extracted hereinbefore, Lohar was not included as a Scheduled Tribe. It is only, as evidenced from the translated version, that the community 'Lohar' came to be wrongly translated for the word

'Lohra' or 'Lohara' and shown to have been included in the Second Schedule, Part III, applicable to Bihar State. Mr. B.B. Singh, therefore, is right in placing before us the original version in English and the translated version.

20. Accordingly, we hold that Lohars are an Other Backward Class. They are not Scheduled Tribes and the Court cannot give any declaration that Lohars are equivalent to Loharas or Lohras or that they are entitled to the same status. Any contrary view taken by any Bench/Benches of Bihar High Court, is erroneous. It would appear that except some stray cases, there is a consistent view of that Court that Lohars are not Scheduled Tribes. They are blacksmiths. We approve the said view laying down the correct law."

56. Now, we come to a subsequent Constitution Bench judgment of this Court in **State of Maharashtra Vs. Milind and Ors., (2001) 1 SCC 4.** Before the Constitution Bench, two questions arose, which are noted in paragraph 1 of the judgment to the following effect:-

"In this appeal, the following two questions arise for consideration:

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

(*2*) Whether "Halba-Koshti" caste is a sub-tribe within the meaning of Entry 19 (Halba/Halbi) of the said Scheduled Tribes Order relating to the State of Maharashtra, even though it is not specifically mentioned as such?"

57. Entry 19 of the Constitution (Scheduled Tribes) Order, 1950 as applicable in the State of Maharashtra was Halba/Halbi. The claim was raised by another caste Halba-Koshti that they are also entitled for issue of Scheduled Tribe certificate. The caste certificate of the respondent was rejected by the Caste Scrutiny Committee against which an appeal was filed, which was dismissed holding that respondent No.1 belonged to Koshti and did not belong to Halba/Halbi Scheduled Tribe. Writ petition was filed by respondent No.1, which was allowed by the High Court holding that it was permissible to enquire whether any sub-

division of a tribe was a part and parcel of the tribe mentioned therein and that 'Halba-Koshti' is a subdivision of main tribe 'Halba'/'Halbi' as per Entry No. 19 in the Scheduled Tribe Order applicable to Maharashtra. In paragraph 5 of the judgment, following was held by this Court:-

> **"5.** The High Court allowed the writ petition and quashed the impugned orders inter alia holding that it was permissible to inquire whether any subdivision of a tribe was a part and parcel of the tribe mentioned therein and that "Halba-Koshti" is a subdivision of main tribe "Halba/Halbi" as per Entry 19 in the Scheduled Tribes Order applicable to Maharashtra. Hence the State of Maharashtra has come up in appeal by special leave, questioning the validity and correctness of the order of the High Court allowing the writ petition of Respondent 1."

58. This Court after noticing the constitutional provisions held that it is not possible to say that State Governments or any other authority or courts or tribunals are vested with any power to modify or vary the Scheduled Tribes Orders. This Court also held that no enquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included. In paragraph 12, following has been laid down:-

> "**12.** .....It appears that the object of clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/ Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342, is to be determined looking to them as they are. Clause (2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the entries in the schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the

A schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Scheduled Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of the said articles, cannot be varied by subsequent order or notification B even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or courts or Tribunals are vested with any power to modify or vary the said Orders. If that be so, no inquiry is permissible and no evidence can be let in for establishing that a C particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in clause (2) of Articles 341 and 342 would be futile, holding any inquiry or letting in any evidence in that regard is neither permissible nor useful." D

59. The Constitution Bench reiterated that the power to include or exclude, amend or alter the Presidential Order is expressly and exclusively conferred on and vested with the Parliament and Courts cannot and should not extend jurisdiction to deal with the question as to whether a particular caste or sub-caste or group or part of tribe is included E in any one of the entries mentioned in the Presidential Order. Following was laid down in paragraph 15:-

"15. Thus it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or F burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine G and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular H

caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential Order, when it is not so specifically included, may lead to problems……."

60. It is further to be noticed that Constitution Bench in **Milind's case (supra)** has noted the ratio of earlier two Constitution Bench judgments in **B. Basavalingappa's case** and **Bhaiya Lal's case** and in paragraph 28 has reaffirmed the ration of above two Constitution Bench judgments. In paragraph 28, following is laid down:-

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

61. In view of the ratio of judgments of this Court as noticed above, the conclusion is inescapable that the High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe "Gowari" is part of Scheduled Tribe "Gond Gowari", which is included in the Constitution (Scheduled Tribes) Order, 1950. It is further

clear that there is no conflict in the ratio of Constitution Bench judgments of this Court in **B. Basavalingappa's case** and **State of Maharashtra Vs. Milind and Ors. (supra)**. The ratio of **B. Basavalingappa's case** as noted in paragraph 6 of the judgment and extracted above is reiterated by subsequent two Constitution Bench judgments in **Bhaiya Lal's case** and **Milind's case.** There being no conflict in the ratio of the above Three Constitution Bench judgments, we do not find any substance in submission of Shri Rohatgi that for resolving the conflict, the matter need to be referred to a larger Constitution Bench. We, thus, answer question Nos.1 and 2 in following words:-

(i) The High Court in the writ petition giving rise to these appeals could not have entertained the claim of a caste "Gowari" that it be declared a Scheduled Tribe as "Gond Gowari" included at Entry No.18 of the Constitution (Scheduled Tribes) Order, 1950 nor High Court could have taken evidence to adjudicate the above claim.

(ii) There is no conflict in the ratio of the judgment of Constitution Bench of this Court in **Basavalingappa's case** and **Milind's case**.

QUESTION NOS. 3 AND 4

Both the above questions being inter-related are being taken together.

62. The Scheduled Tribe "Gond Gowari" as existing in Item No.28 of Entry 18 of Constitution (Scheduled Tribes) Order, 1950 applicable to State of Maharashtra is continuing in the List of Scheduled Tribes of Bombay State (now State of Maharashtra) since 29.10.1956. To a large number of members of the "Gond Gowari" caste Scheduled Tribe certificates have been issued by the competent authority in the State of Maharashtra from time to time. In **Writ Petition No. 4779 of 2008 (Adivasi Gond Govari (Gowari) Sewa Mandal through its President vs. State of Maharashtra and others)** the writ petitioner has prayed for quashing and setting aside the caste validity certificates issued in the name of respondent Nos. 4 to 19 as "Gond Gowari", Scheduled Tribe. The fact that before the High Court there was a writ petition where caste certificates granted to 16 respondents of "Gond Gowari" were sought to be quashed clearly proved the existence of community "Gond Gowari". Although there have been recommendations by the State of

Maharashtra earlier in the year 1967 and thereafter in the year 1979 to include the "Gowari" as Scheduled Tribe, the said recommendations were never accepted by the Parliament since in spite of passing of several Amendment Acts by the Parliament to the Constitution (Scheduled Tribes) Order, 1950 Entry of "Gond Gowari" in the Scheduled Tribe was never deleted. A private bill to delete Entry of "Gond Gowari" and substitute it by Gowari was not passed by the Parliament and turned down. The High Court has also referred to and relied on the book "Tribes and Castes of the Central Provinces of India by R.V. Russell and Rai Bahadur Hira Lal wherein castes "Gond Gowari" and "Gowari" were separately dealt with as distinct castes. It is also on the record that the State of Maharashtra even though it had recommended vide letters dated 26.03.1979 and 12.06.1979 to include Gowari in the list of Scheduled Tribes but on 06.11.1981 State of Maharashtra wrote to Ministry of Home Affairs, New Delhi where dealing with the subject of the Scheduled Tribes in paragraph 3(iii) following was stated:

> "3 (iii) Following tribes do not fulfill the criteria of S.Ts and hence State Government does not consider it necessary to include them in the list of S.Ts of this State and hence their inclusion is not recommended:
>
> 1) Otari
>
> 2) Gowari
>
> 3) Dhangar
>
> 4) Mana"

63. Thus, the State Government recommended Gowari not to be included as they having not fulfilled criteria of Scheduled Tribe. It is to be noted that in letter dated 26.03.1979 of the Government of Maharashtra to the Union of India although recommendation was made to include Gowari in Scheduled Tribe but there was no recommendation to delete "Gond Gowari" from the list of Scheduled Tribes. In letter dated 26.03.1979 with regard to Gowari, following statement was made:

> "III] GOWARI: The community is at present included in the list of Scheduled Tribes, as "Gond Gowari". It has been represented to Government that Gowari community is not a sub-group of the tribe, Gond, but is is a separate tribe in itself. The State Government had accordingly recommended to the Government of India to show

A the Gowari tribe separately. A copy of Chief Minister's D.O. Letter dated 27.1.1967 is enclosed. The tribe Gowari may now be included, as a separate tribe. The Joint Committee on the Scheduled Castes and Scheduled Tribes Orders(Amendment) Bill 1967, had recommended the inclusion of the community as a separate tribe for Vidarbha area."

B

64. Thus, the recommendation to include Gowari as a separate Scheduled Tribe was forwarded by the State of Maharashtra in the year 1979 which was withdrawn in 1981 and after 1981 the State's stand has been that "Gond Gowari" and "Gowari" are two separate castes and Gowari is not entitled for the benefit of Scheduled Tribe certificate. The

C Government of State of Maharashtra, Tribal Development Department has issued G.R. dated 24.04.1985 where the State Government has referred to "Gond Gowari" as small sub-Tribe of Gond and non-Scheduled Tribe caste was referred as Gowari. Along with the Government Resolution dated 24.04.1985 a comparative Chart was annexed of

D Scheduled Tribe and non-Scheduled Tribe community which was claiming benefit. It is useful to extract comparative table which was part of Government Resolution dated 24.04.1985 which is to the following effect:

E

F

	Number of Scheduled tribe from the list and the tribe, corresponding tribe or sub-tribe on that number	General information of residence of Scheduled tribes, corresponding tribes, sub-tribe and native place, population of corresponding tribe, sub-tribe and other general information	Non-scheduled Caste/tribe which can obtain Caste Certificate by showing the similarity of names (From column No.3) of Scheduled tribes, corresponding tribes	General places of residence, approximate population and other general information of Non-scheduled Caste/Tribe	Traditional Occupation of Non-scheduled Caste/Tribe	Remarks and general information
1	2	3	4	5	6	7
8	(18) Gond Govari	There is a small sub tribe of Gond tribe. There is no separate mention of population of this sub-tribe. Their population is merged in population of Gond tribe..	Govari, Gavari, Gaygovari, Milk-Govari	The population of Govari, Gavari should be 2 lakhs. This caste is spread mainly in Nagpur, Amravati, Wardha, Yavatmal,	Their main occupations are Farming, Cow-Animal Farming, Production of Milk, Husbandry.	There is no social relation of Govari and corresponding tribes with Gond tribe.

G

H

		This tribe is found in Kurkheda Taluka, Gadchiroli district. People from Gond tribe who do animal farming are called by locals "Gond Govari. In 1901, their population in Chandrapur district was 3000. As they belong to Gond tribe, their language, social life, customs, traditions, religious rituals are that of Gond. Clan, Family god/goddess, surnames and other is same as that of Gond		Bhandara, Chandrapur, Gaadchiroli districts. "Krishna, Ganga, Jamuna" are the worshipping god/goddesses of this tribe. Kade-Kodevan is their main God. They have caste panchayat and its chief is called "Gondya". They do not marry in the same clan. Clans such as Tohar, Ambadare, Kohachya, Ravat, Sakhena, Thakare, Sonavane.		There is no traditional, hereditary, language, marital relations between them. Gond Govar do not milk the cows. They only do animal farming. Instead Govari tribe do the production of milk. Due to the similarity of name of "Gavari" word, people of "Govari, Gavari" obtain the Scheduled tribe certificate to take the benefits of the tribe.

65. The above materials which were on the record before the High Court as well as continuance of "Gond Gowari" as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950 for the last more than 60 years, it was not open for the High Court to proceed into the inquiry as to whether Scheduled Tribe "Gond Gowari" is not in existence.

66. The High Court in the impugned judgment has formulated three questions in paragraph 31 of the judgment which is to the following effect:

> "Therefore, the questions involved in all these cases are threefold as under:
>
> (1) Is it permissible for this Court to hold that it is the Gowari community alone which is meant by 28th Item "Gond Gowari" in the cluster of tribes in Entry No. 18 in the Constitution (Scheduled Tribes) Order?,

A (2) Whether there existed any tribe as "Gond Gowari" as on 29-10-1956, i.e. the date of its inclusion as 28th Item in Entry No. 18 of the said Order, other than Gond and Gowari?,

(3) If there did not exist as such any tribe as "Gond Gowari", whether it was Gowari community alone which was included as
B 28th Item in Entry No.18 of the said Order?"

67. The High Court referring to this Court's judgment in **B. Basavalingappa** proceeded to enter into the material produced by the respondents to the writ petition as to whether "Gond Gowari" were not in existence prior to their inclusion in Constitution (Scheduled Tribes)
C Order, 1950. We have already held that the ratio of **B. Basavalingappa** judgment did not permit the High Court to enter into the issue as to whether a Tribe which is included in the Constitution (Scheduled Tribes) Order, 1950 did not exist. The High Court proceeded to answer to question Nos. 2 and 3 as noted above in paragraphs 34 to 57.

D 68. Now, we proceed to consider the reasons given by the High Court in coming to the conclusion that Tribe "Gond Gowari" became extinct prior to 1911. The High Court in paragraphs 41 to 43 of the judgment has noticed the Census of India 1891. The High Court itself in the aforesaid paragraphs have noted that Census of 1891 separate figures were given of "Gowari" and "Gond Gowari". In paragraph 43 following
E observations have been made by the High Court:

"43.....The separate population figures of Gowaris and "Gond Gowari"s in the four districts of (i)Nagpur, (ii) Wardha, (iii)Chanda, and (iv) Bhandara in Nagpur Division were shown in the Table XIII in the Census Report of 1891. The strength of
F Gowaris and "Gond Gowari"s in the said Census was shown in Nagpur as 13,491 and 11, in Wardha as 10,397 and 60, in Chanda 11,217 and 19, in Bhandara 49212 and 335 respectively in the part of C.P. and Berar."

69. The High Court has also noticed the Census of 1901 and
G noticed that in Nagpur Division the total population of "Gowari" and "Gond Gowari" was mentioned. Gowari was mentioned as 91,632 and whereas "Gond Gowari"s were mentioned in five Districts of Nagpur Division as 2,553. The High Court then proceeded to examine the Census of 1911 and it noticed that earlier classification of caste according to
H their social precedents was changed reverting back to the past class

classification of 1891 caste in according to traditional occupations, out of 37 main occupational groups, group IV was of Forest and Hill Tribes and Group V was of Graziers and Dairymen. The High Court noticed that in Census of 1911 Group V in Central Provinces mentioned Gowari as 157,580 but there was no mention of "Gond Gowari". Similarly, Census of 1921 of Group V of Graziers and Dairymen was noticed where Gowari was mentioned as 155,902. After noticing the aforesaid facts from Census the High Court recorded its conclusion in paragraph 57 to the following effect:

> "57. In our view, the tribe "Gond Gowari", which was a small hybrid caste formed by an alliance of Gond and Gowaris was completely extinct before 1911 Census and no trace of it was found either in the Maratha country of the C.P. and Berar or in the State of Madhya Pradesh. We, therefore, hold that there did not exist any tribe as "Gond Gowari" as on 29-10-1956, i.e. the date of its inclusion as 28th Item in Entry No. 18 of the Constitution (Scheduled Tribes) Order in relation to the State of Maharashtra and it was Gowari community alone shown as "Gond Gowari". We, therefore, answer the question Nos. (2) and (3) accordingly."

70. The High Court itself has in its judgment noticed and found the mention of "Gond Gowari" in Census of 1891 and 1901. The substantial figures of "Gond Gowari" in the above two Censuses in Nagpur Division were noticed. The High Court itself having noticed that the basis of Census in 1911 was changed, classification was made on the basis of traditional occupation in which group IV was of Forest and Hill Tribes and Group V was of Graziers and Dairymen, the figures of 1911, 1921 and 1931 have been noticed where in Group V Graziers and Dairymen, there was mention of Gowari. Mere fact that in Censuses of 1911, 1921 and 1931 figures were given only of Group V, i.e., Graziers and Dairymen and there was no mention of "Gond Gowari" cannot lead to conclusion that "Gond Gowari" have become extinct before 1911. A Scheduled Tribe which admittedly was in existence and had a distinct identity shall not be treated to have become extinct merely because the basis of Census has been changed in the subsequent years. The benefit given to a Scheduled Tribe cannot be taken away on the basis of figures given in Census operation only. There have been amendments in Constitution (Scheduled Tribes) Order, 1950 from time to time. Several Tribes were

A deleted from the list by the Act of Parliament and several new Tribes were included. There had been recommendations by the Joint Committee of Parliament for exclusion of the Tribes which were excluded if there was no return in respect of those communities in Censuses of 1961 and 1971. We may refer to Statement of Objects and Reasons of The Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1976 which has been stated:

> ".....The Committee had also recommended exclusion of certain communities from the lists of Scheduled Castes and Scheduled Tribes. These exclusions are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that there were no returns in respect of these communities in the censuses of 1961 and 1971."

71. The above clearly indicates that those Scheduled Tribes and Schedules Castes were excluded if only there was no return in respect of Census of 1961 and 1971. We, thus, are of the view that the whole basis of judgment of the High Court that Tribe "Gond Gowari" was extinct prior to 1911 Census and in subsequent Censuses 1911, 1921 and 1931 they were not shown in Group V is completely flawed. The inclusion of sub-Tribe as "Gond Gowari" in the Constitution (Scheduled Tribes) Order, 1950 was on 29.10.1956 when sub-Tribe "Gond Gowari" was included in the Scheduled Tribe list it has to be presumed that the said inclusion was after consultation with the State and after considering the relevant materials. The High Court could not have questioned the inclusion of the Scheduled Tribe "Gond Gowari" in the Constitution (Scheduled Tribes) Order, 1950 on the basis of reasoning as adopted by the High Court. The High Court has referred to and relied on the book "Tribes and Castes of the Central Provinces of India" by R.V. Russell and Rai Bahadur Hira Lal in which book in Volume III community Gond, "Gond Gowari" and Gowari were all separately dealt with, describing "Gond Gowari" in Volume III Russell states:

> "**Gond-Gowari**.—A small hybrid caste formed from alliances between Gonds and Gowaris or herdsmen of the Maratha country. Though they must now be considered as a distinct caste, being impure and thus ranking lower than either the Gonds or Gowaris, they are still often identified with either of them. In 1901 only

3000 were returned, principally from the Nagpur and Chanda Districts. In 1911 they were amalgamated with the Gowaris, and this view may be accepted as their origin is the same. The Gowaris say that the Gond-Gowaris are the descendants of one of two brothers who accidentally ate the flesh of a cow. Both the Gonds and Gowaris frequent the jungles for long periods together, and it is natural that intimacies should spring up between the youth of either sex. And the progeny of these irregular connections has formed a separate caste, looked down upon by both its progenitors. The Gond-Gowaris have no subcastes, and for purposes of marriages are divided into exogamous septs, all bearing Gond names. Like the Gonds, the caste is also split into two divisions, worshipping six and seven gods respectively, and members of septs worshipping the same number of gods must not marry with each other."

72. In the same Volume Gowari has been dealt with:

"**Gowari.**—The herdsman or grazier caste of the Maratha country, corresponding to the Ahirs or Gaolis. The name is derived from gai or gao, the cow, and means a cowherd. The Gowaris numbered more than 150,000 persons in 1911, of whom nearly 120,000 belonged to the Nagpur division and nearly 30,000 to Berar. In localities where the Gowaris predominate, Ahirs or Gaolis, the regular herdsman caste,are found only in small numbers. The honorific title of the Gowaris is Dhare, which is said to mean 'One who keeps cattle.' The Gowaris rank distinctly below the Ahirs or Gaolis."

73. In the same Volume while describing the sub-Caste of Gowari following description is given:

"The Gowaris have three divisions, the Gai Gowari, Inga, and Maria or "Gond Gowari". The Gai or cow Gowaris are the highest and probably have more Gaoli blood in them. The Inga and Maria or "Gond Gowari"s are more directly derived from the Gonds. Maria is the name given to a large section of the Gond tribe in Chanda. Both the other two subcastes will take cooked food from the Gai Gowaris and the "Gond Gowari"s from the Inga, but the Inga subcaste will not take it from the Gond, nor the Gai Gowaris from either of the other two. The "Gond Gowari"s have been treated as a distinct caste and a separate article is given on them,

A but at the census Mr. Marten has amalgamated them with the Gowaris. This is probably more correct, as they are locally held to be a branch of the caste. But their customs differ in some points from those of the other Gowaris. They will admit outsiders from any respectable caste and worship the Gond gods, [115] and there seems no harm, therefore, in allowing the separate article on them to remain."

B

74. In the above passage it has been categorically stated that "Gond Gowari" has been treated as a distinct caste and in the Census they have been amalgamated with Gowari. The account given by Russell does not lead to any conclusion that "Gond Gowari" were extinct before 1911.

C

75. It is also relevant to note that it was after the report of Backward Classes Commission (1955), where recommendation was made to include Gowari as sub-Tribe of Gond for the State of Madhya Pradesh, consequently by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 in State of Madhya Pradesh "Gond Gowari" was added in Entry 12 and after re-organisation of the State, in Districts which came into State of Bombay, "Gond Gowari" was added by Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 dated 29.10.1956 "Gond Gowari" was added. There have been conscious addition by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 and Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 as "Gond Gowari" it cannot be accepted that the Parliament included Tribe which had become extinct before 1911.

D

E

F

76. The High Court in paragraph 68 of the judgment has itself referred to Report of Research Officers dated 12.05.2006. On the basis of the decision taken in respect Gowari community under the Chairmanship of Hon'ble Chief Minister on 29.05.2005 Tribal Development Department was entrusted to ascertain the facts. The Research Officers on 12.05.2006 personally visited the areas in which maximum population of Gowari caste and "Gond Gowari" caste were found in different villages of District Gadchiroli. It shall be useful to refer to the paragraph 68 of the judgment of the High Court which is to the following effect:

G

"68. After going through the report dated 12-5-2006 (wrongly mentioned as '18-5-2006'), we find that the Research Officers

H

visited the areas. The Committee of the Research Officers conducted search of revenue and school records of certain claimants. It is the finding of the said Committee that upon inspection of P-I Register prior to 1950 in the Taluka Office of Land Records at Kurkheda, no evidence is found of the entry "Gond Gowari", but the evidence is of the entries of Gowari or Gowara. The Committee also inspected the school records of the period prior to 1950 from the Zilla Parishad Primary School, which included the school admission register and the affidavits. It found one entry of Gowari (Gond) made on 1-7-1955 and rest of the entries are of Gowara or Gowari, which are also found in the Zilla Parishad Primary Schools at Ramgad, Yenglekheda, Saletola. The Research Officers further record the finding that upon oral interviews of the villagers, it is found that "Gond Gowari" tribe is a sub-tribe of Gond and their cultural traits and customs are found similar to those of Gond tribe. It further states that when the information about Gowari tribe is collected, it was found to be an independent tribe, having no similarity in cultural traits and customs with Gonds or "Gond Gowari"s. The Committee has tried to lay down the six tests to make out a distinction between Gowaris and "Gond Gowari"s."

77. The High Court in the above paragraph itself has noticed that the Research Officers conducted research and has also found Entry of "Gond Gowari" made on 01.07.1955. Thus, the Research Officers before 29.10.1956 found "Gond Gowari" hence the above evidence which was relied by the High Court itself proved that "Gond Gowari" Tribe was in existence and found personally by the Research Officers. Although in paragraph 68 the above facts were noticed by the High Court but in paragraph 74 in the heading: **ADJUDICATION BY US** in sub-para (3) the High Court states:

"74(3) There is no reason to discard the report of the Research Officers submitted on 12/18-5-2006. The Research Officers personally visited the core area of residence of Gond Gowaris, inspected the old record of Zilla Parishad Schools and the Land Revenue Department, conducted oral interviews of the villagers, **but did not find any Entry as Gond Gowari** or any person of this tribe. The Research Officers record the finding that Gowari tribe has no affinity with Gonds. "

(emphasis by us)

78. The conclusion of the High Court that Research Officers did not find any Entry as "Gond Gowari" is factually incorrect and contrary to what was found in paragraph 68 as noted above.

79. We have already noted above the Government Resolution dated 24.4.1985 issued by the Tribal Development Department of the State, the difference between "Gond" and "Gond Gowari", the difference in the character and customs of Scheduled Tribe community of "Gond Gowari" and community of Gowari as extracted above. The Government Resolution was issued after study by the State Government, the High Court although has noticed above Resolution in paragraph 70 of the judgment but has given no reason as to why differentiation in two Tribes is to be discarded.

80. There is one more reason due to which the conclusion of the High Court that Scheduled Tribe "Gond Gowari" was extinct before 1911 has to be flawed. The reason is that in Writ Petition No.4779 of 2008 filed by Advasis "Gond Gowari" a prayer was made to quash the Scheduled Tribe certificates to "Gond Gowari" granted to respondent Nos. 4 to 19. The High Court by passing order has called for certificates of "Gond Gowari" which are dealt with by the High Court in paragraph 77 to 83. In paragraph 77 following is the discussion by the High Court:

> "77. .....The record shows that 22 claimants produced the extracts of P-I Register maintained by the Taluka Land Records Departments showing the caste of their forefathers as "Gond Gowari" prior to 1950. Except this, none other claimants out of 136, produced any record of the period prior to the year 1950, evidencing their caste/tribe as "Gond Gowari", but the documents produced by them indicate their caste/tribe as Gond, Gowara or Gowari. If the documents produced by all such 136 claimants prior to 1950 and subsequent to 1950 are taken into consideration, the same indicate that 39 claimants produced the documents indicating their tribe as "Gond Gowari"; 53 claimants produced the documents indicating their tribe as Gowari; 29 claimants produced the documents showing their tribe as Gowara; and 9 claimants produced the documents showing their tribe as Gond. **This position is also admitted and demonstrated in the reply filed by the Committee**. "

81. The High Court further in paragraph 83 after perusing the records of the Committee found 39 claimants produced the documents

which are in the nature of entries in P-I revenue record pertaining to the period 1922-1923. When before the High Court Scheduled Tribe certificates of "Gond Gowari" were filed in large number and there were documents to support by the revenue entries some of which are prior to 1950 and which certificates were sought to be quashed in the writ petition, the existence of Scheduled Tribe "Gond Gowari" was very much found. The Caste Scrutiny Committee having validated the said certificates it was not open for the High Court to say that Scheduled Tribe "Gond Gowari" became extinct prior to 1911. The host of the evidence which was before the High Court including the Research Officers' Report dated 12.05.2006 and Scheduled Tribe certificates of the candidates who were "Gond Gowari" it was not open for the High Court to come to the conclusion that Scheduled Tribe "Gond Gowari" was extinct prior to 1911. The High Court summoned all the certificates and there was no finding that certificates were fake or persons who were given certificates are non-existent. The High Court erred in coming to the conclusion that "Gond Gowari" Tribe was extinct prior to 1911. We, thus, conclude that even on the basis of materials which were brought before the High Court no conclusion could have been drawn that "Gond Gowari" Tribe was extinct prior to 1911.

82. We, thus, answer Question Nos.3 and 4 in the following manner:

ANSWER NO. 3

The High Court could not have entered into the issue that "Gond Gowari" which was Scheduled Tribe mentioned in Constitution (Scheduled Tribes) Order, 1950 as amended upto 1976 is no more in existence and became extinct before 1911.

ANSWER NO. 4

The conclusion of the High Court in the impugned judgment that "Gond Gowari" Tribe had been extinct before 1911 is not supported by the materials which were on record before the High Court.

QUESTION NO. 5 & 6

Both the questions being interconnected are taken together.

83. The caste 'Gowari' and 'Gond Gowari' are two distinct and separate castes. We have extracted the description of 'Gowari' and 'Gond Gowari' given by Russell and Hiralal in the celebrated book, 'The

A Tribes and Castes of Central Provinces of India'. Russel and Hiralal have separately dealt with 'Gowari' and 'Gond Gowari' and have categorically stated that 'Gond Gowari' have been treated as distinct castes from 'Gowari'. We may also refer to the book published by Anthropological Survey of India, People of India, National Series Volume III on "The Scheduled Tribes', where 'Gond Gowari' have been described in following words: -

B

> "GOND, GOWARI They are a community of cattle herders who have been referred to by Russell and Hiralal (1916) as the Gond-Gowari and described as a small hybrid caste formed by an alliance between the Gonds and Gowaris. They have been enlisted as Gowari, a subgroup of the Gond in the Government of India list for scheduled tribes. Our findings, however, reveal that they are a discrete community and not a subgroup of any other tribe. They are distributed in the Bhandara, Amravati and Garhchiroli districts of **Maharashtra** and in the Balaghat and Sioni districts of Madhya Pradesh. Marathi is spoken for both inter-and intra-group communication. The Devanagari script is used. The Gowari are short and medium-statured people with a dark complexion. The main diet is rice, jowar and wheat, local pulses and seasonal vegetables. They are non-vegetarians but do not eat beef."

C

D

E 84. The 'Gowari' which is another backward community have not been included in the list of Scheduled Tribes in the above book.

85. We have already referred to the Enquiry Report by the Tribal Development Department dated 12.05.2006. The Enquiry Report states following: -

F

> "With connection of knowing the culture, customs and traditions of Gowari caste and Gowari Tribe, visits were made to aforesaid villages and during these visits village information sheets were given to villagers to be filled by them; also discussions made with them and their statements were recorded. Also information was gathered from the rest of the villagers who did not belong to either of these two communities about their knowledge of these two communities. From this information it has transpired that Gond Gowari tribe is a sub-tribe of Gond Tribe and that there is traditional intermixing of food and marital ties (roti-beti relationship) between these communities and there are common cultural customs and

G

H

traditions between them. However, having collected the information about Gowari Caste it has transpired that it has a separate existence and its culture, customs and traditions do not match with culture customs and traditions of Gond or Gond Gowari Tribe which are totally different."

86. We have further noticed the Census of 1891 and 1901 which have been referred by the High Court. The population of 'Gowari' has been shown separately from the population of 'Gond Gowari'. We have also noticed the ratio of the Constitution Bench judgment of this Court in **Basavalingappa** and **Bhaiya lal** as well as **Milind.** The High Court could not have undertaken the enquiry to declare the caste which is not included in the Scheduled Tribes Order, 1950 as a Scheduled Tribe. The High Court could not have granted a declaration that the caste 'Gowari' is 'Gond Gowari' which is referred to in Item 28 of Entry 18 of Constitutional Scheduled Tribes Order, 1950 amended as on date.

87. The High Court's view that 'Gond Gowari' is not a sub-tribe of 'Gond', hence, its validity cannot be tested on the basis of the affinity test specified in the Government Order dated 24.04.1985 is also not correct. The report of the first Backward Commission (1955) by which recommendation was made to add 'Gowari' as a sub-tribe of 'Gond' was on the basis of study and research by the Backward Commission which cannot be brushed aside.

88. We have also noticed the authoritative books on Tribes in Central India that 'Gond Gowari' is a sub-tribe of 'Gond'. In the Government Resolution dated 29.04.1985 comparative chart was annexed where general information regarding Scheduled Tribes and non-Scheduled Tribes i.e. 'Gond Gowari' and 'Gowari' have been given. The Government Resolution also mentioned that 'Gond Gowari' is also a small sub-tribe of 'Gond' tribe.

89. Shri Rohtagi submits that it has been held by this Court that with regard to entries of Scheduled Tribes in Entry 18, all entries be treated to be separate caste and it is not necessary to prove any affinity with 'Gond'. He submits that in the Entry 18, the word "including" was deleted by Scheduled Caste and Scheduled Tribes Order Amendment Act, 1976, the effect of which was that all entries of caste in Entry 18 became independent to 'Gond' and no affinity is to be proved by any community from 'Gond'. He submits that 'Gowari' to claim the benefit

A of the Scheduled Tribe need not prove any affinity with 'Gond'. He submits that the High Court has rightly undertaked the exercise to ignore a non-existent tribe and to extend the benefit of the Scheduled Tribe. Shri Rohtagi has placed reliance on judgment of this Court in **State of Maharashtra versus Mana Adim Jamat Mandal, (2006) 4 SCC 98**. In the above case, two questions were raised which have been noticed in the paragraph 1 of the judgment which is to the following effect: -

B

> "1. What appears to be a perpetual controversy with regard to the Scheduled Tribe status has again engaged the attention of this Court for a considerable time. Two questions are raised before us:
>
> 1. Whether the "Mana" community in the State of Maharashtra is a sub-tribe of "Gond" and is a Scheduled Tribe or not?
>
> 2. Whether a two-Judge Bench decision of this Court in Dina v. Narayan Singh (for the sake of brevity "Dina I") and the decision rendered by another two-Judge Bench of this Court in Dadaji v. Sukhdeobabu (for the sake of brevity "Dina II") are overruled by a Constitution bench of this Court in State of Maharashtra v. Milind?"

C

D

E 90. The caste 'Mana' was also one of the castes which was included in the Entry 18. By the Government Resolution dated 24.04.1985, it was directed that 'Mana' community be not treated as Scheduled Tribe unless they establish relationship or affinity with 'Gond' which Government Resolution was also under challenge in the above case.

F 91. This Court in the above judgment noticed the deletion of word "including" in Entry 18 and came to the conclusion that Mana is not a sub-tribe of 'Gond'. Following was laid down in paragraph 30: -

> "30. The common pattern found in most of the group entries is that there is a punctuation mark comma (,) between one entry and another entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. In the present case, Entry 18 of the Schedule clearly signifies that each of the tribes mentioned therein is deemed to be a separate tribe by itself and not a sub-tribe of "Gond". "Gond" is a Schedule Tribe, it is not disputed. As already noticed that "Gond" including Arakh or Arrakh, etc. found in Entry 12 of the Amendment Act 63 of 1956

G

H

has been done away with by the Amendment Act of 1976. In Entry 18 of the Second Schedule of the Amendment Act of 1976 the word "including" was deliberately omitted, which signifies that each one of the tribes specified in Entry 18 is deemed to be a separate tribe by itself. Therefore, "Mana" is not a sub-tribe of "Gond" but a separate tribe by itself and is a Schedule Tribe."

92. What was laid down by this Court with regard to 'Mana' which was also a tribe included in Entry 18 is not applicable with regard to Entry 'Gond Gowari'. With the 'Gowari' word 'Gond' is prefixed. The expression 'Gond Gowari' clearly expresses that the community 'Gond Gowari' has to do with tribe 'Gond' The community 'Mana' has no such indication and insofar as 'Gond Gowari' is concerned we are clear in our view that 'Gond Gowari' is a community which has affinity with 'Gond' and is sub-tribe of 'Gond'. The entry of 'Gond Gowari' in Scheduled Tribes Order 1950 was as a sub-tribe of 'Gond' which is clear from a report of the Backward Classes Commission, 1955. When the inclusion of the entry 'Gond Gowari' was as (sub-tribe of Gond), its affinity with 'Gond' cannot be ignored on any basis.

93. The judgment of this Court in **State of Maharashtra versus Mana Adim Jamat Mandal (Supra)**, cannot be read as an authority to hold that 'Gond Gowari' has no affinity with 'Gond'. The judgment of this Court in **State of Maharashtra versus Mana Adim Jamat Mandal (supra)** is solely based on deletion of word "including" in Entry 18. For the purpose of this case, we need not delve any further as to what is the intendment of Parliament in deleting the word "including" and by deletion of word "including", all tribes included in common group i.e. Entry 18 shall be treated separate and has nothing to do with 'Gond'.

94. We entertain our own doubts about the correctness of the ratio of judgment in the **State of Maharashtra versus Mana Adim Jamat Mandal** with regard to a group entry. As per Article 342(1), tribes or tribal communities or parts or groups within tribes or tribal communities shall for the purposes of the Constitution be deemed to be Scheduled Tribes. There has to be some purposes for joining number of tribes together in one entry, but as observed above in case with regard to 'Gond Gowari' the affinity is more than apparent with 'Gond' and the judgment of this Court in **State of Maharashtra versus Mana Adim Jamat Mandal (Supra)** cannot be read as an authority to hold that 'Gond Gowari' is not a sub-tribe of 'Gond' and no affinity is required to

be established with Gond by the tribe 'Gond Gowari'. We thus do not find any infirmity in Government Resolution dated 24.04.2984 insofar as Scheduled Tribe 'Gond Gowari' is concerned.

95. In view of the foregoing discussion we answer question No.5 and 6 in following manner: -

ANSWER NO. 5

The caste 'Gowari' is not the same as 'Gond Gowari'. The High Court could not have granted declaration of caste 'Gowari' as 'Gond Gowari'.

ANSWER NO. 6

The High Court is not correct in its view that 'Gond Gowari' shown as item No.28 in Entry 18 of Scheduled Tribes Order, 1950, is not a sub-tribe of 'Gond'. The validity of caste certificate to 'Gond Gowari' has to be tested on the basis of affinity test as specified in the Government Resolution dated 24.04.1985.

96. In view of the foregoing discussion, none of the reasons given by the High Court in paragraph 74 of the judgment are sustainable to hold that 'Gowari' are entitled to Scheduled Tribes Certificate of 'Gond Gowari'. The entire basis of the judgment of the High Court that tribe 'Gond Gowari' was completely extinct before 1911 having been found to be flawed, the entire basis of judgment is knocked out.

97. Much emphasis has been given by the learned counsel for the respondents that the State Government having recommended in 1967 and 1979 to include 'Gowari' in the list of Scheduled Tribes, it could not have changed its view subsequently. One of the reasons given by the High Court in paragraph 74(2) is as follows: -

> "74(2). We accept the view taken by the Central and the State Government that - (a) Gowari community is included in the Scheduled Tribes Order of the State as 'Gond Gowari' and it is wrongly projected as a sub-tribe of Gond, (b) Gowari is an independent tribe and not a sub-tribe of Gond, and (c) it is the Gowari community which will have to be issued the certificate as Gond Gowari."

98. When the State has expressly after 1979 has written to the Government of India on 06.11.1981 that 'Gowari' community does not fulfill the criteria of Scheduled Tribe and thereafter after 1984, several studies were conducted by Tribal department in State of Maharashtra including report dated 12.05.2006 which reaffirms that 'Gond Gowari' and 'Gowari' are distinct community and 'Gowari' is not Scheduled Tribe, there was no error in taking stand before the High Court in the writ petition that 'Gowari' are not entitled for Scheduled Tribe Certificate. We fail to understand as to how the High Court has observed that it accepts the view of the Central and State Government that 'Gowari' community be included in the Scheduled Tribe Order.

99. Learned Counsel for the petitioner has also relied on the report dated 29.10.2020 submitted by Tata Institute of Social Sciences, Mumbai on "Socio Anthropological study of 'Gowari' community of Maharashtra" in which report, the conclusion has been recorded that there are major differences between 'Gond Gowari' and 'Gowari'. It is relevant to notice that the High Court has noticed the decision of the State Government to entrust the study to Tata Institute of Social Sciences which facts have been noticed in paragraph 86 of the judgment. Although the report dated 29.10.2020 which has been brought on the record do reaffirms the stand taken by the State that both the communities are distinct and different and 'Gowari' are not Scheduled Tribe but we need not base our judgment on such report benefit of which report was not available to the High Court while deciding the writ petition.

100. Now, we come to the last submission of Shri Rohtagi. Shri Rohtagi submits that Scheduled Tribe Certificate to the members of 'Gowari' community was granted after the judgment of the High Court dated 14.08.2018, on the basis of which certificates large number of students have taken admission in different educational institutions taking benefit of Scheduled Tribes as well as employment at various places as Scheduled Tribes candidates which need to be protected by this Court. After the declaration granted by the High Court, the authorities proceeded to grant Scheduled Tribe certificate to the 'Gowari' community and it is true that on strength of such Scheduled Tribe certificate, several students must have taken admission in different courses as Scheduled Tribe candidate and persons have also secured employment as Scheduled Tribe candidate. The State of Maharashtra has belatedly filed these appeals which delay in filing these appeals have already been condoned by us

A and there being no interim orders in these appeals staying the effect of judgment of the High Court, grant of Scheduled Tribe certificate was natural consequence of the judgment of High Court.

101. We in the ends of justice directs that the admission taken and employment secured by the members of 'Gowari' community on the B basis of Scheduled Tribe certificate granted to them between 14.08.2018 till date shall not be affected by this judgment and they shall be allowed to retain the benefit of Scheduled Tribe obtained by them. However, the above Scheduled Tribe candidates shall not be entitled to any further benefit as Scheduled Tribe except their initial admission in different courses or employment at different places on the strength of Scheduled C Tribe certificate given to the 'Gowari' Community obtained between 14.08.2018 and this day.

102. In view of the foregoing discussions, we are of the view that the High Court erred in declaring 'Gowari' as 'Gond Gowari' a Scheduled Tribes referred to in item 28 in Entry 18.

D

103. In result, we allow the appeals, set aside the impugned judgment of the High Court dated 14.08.2018 and dismiss the writ petitions. Parties shall bear their own costs.

Divya Pandey Appeals allowed.