



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No 443 of 2017

Public Interest Committee for Scheduling Specific Areas
and Anr

... Petitioners

Versus

Union of India & Ors

... Respondents

WITH

Writ Petition (Civil) No 187 of 2019

J U D G M E N T**Dr Dhananjaya Y Chandrachud, CJI**

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1. The jurisdiction of this Court under Article 32 of the Constitution has been invoked in two petitions. The first of those petitions seeks a direction for the grant of proportional representation for the Scheduled Tribes in the House of the People and in the Legislative Assemblies of West Bengal and Sikkim in terms of the mandate of Articles 330 and 332 of the Constitution.
2. The second petition seeks more specifically, a direction for upholding the constitutional rights of the Limboo-Tamang Scheduled Tribe to reservation of seats in the Sikkim Legislative Assembly. It seeks directions to amend/strike down the Notification of the Delimitation Commission dated 4 September 2006 and the Delimitation of Parliamentary and Assembly Constituencies Order 2008¹ to the extent that they do not provide for reservations for members of the Limboo-Tamang Scheduled Tribe. It additionally seeks directions to the effect that Section 7(1A) of the Representation of People's Act² is ultra vires the Constitution for the same reason. The petitioner seeks directions to the Delimitation Commission as well as the Election Commission to effectuate the mandate of Article 332 of the Constitution, in respect of Limboo Tamang Scheduled Tribe, by undertaking necessary changes to the 2006 Notification and the 2008 Order.

Constitutional Framework

3. Article 342 of the Constitution empowers the President to specify the tribal communities of the country which will be designated as Scheduled Tribes.

¹ "2006 Notification" and "2008 Order"

² "RP Act"

Communities so designated by the President in the Scheduled Tribes Order or later added by amendment are treated as Scheduled Tribes for the purpose of the Constitution, according to Article 366 (25).

4. Article 330 of the Constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Clause (2) of Article 330 states that the number of seats reserved in a State or Union Territory for the Scheduled Castes or Scheduled Tribes under clause (1) "shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of People as the population of Scheduled Castes or Schedule Tribes in that State or Union Territory bears to the total population of the State or Union Territory".
5. Similar provisions are contained in clause (3) of Article 332³ which mandates the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. Clause (3) stipulates that the number of seats so reserved for the Scheduled Castes or Scheduled Tribes shall be in proportion to the population of the Scheduled Castes or Scheduled Tribes in the State to the total population of the State.

3 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, 8 [except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State.

...

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

6. Three facets of Article 330 and Article 332 need to be noticed at the forefront. First, Articles 330(1) and 332(1) contain a mandate which is evident from the use of the expression "seats shall be reserved" for the Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assembly of every State. Second, the number of seats required to be reserved is stipulated in clause (2) of Article 330 and clause (3) of Article 332. The same principle is adopted by both these provisions, requiring that the number of seats so reserved shall "as nearly as may be" bear the same proportion to the total number of seats allotted to the State in the House of the People and in the Legislative Assembly, as the case may be, as the proportion of the population of the Scheduled Castes or the Scheduled Tribes in respect of which seats are so reserved to the total population of the State. The implementation of the constitutional mandate for reserving seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Legislative Assemblies is governed by a statutory regime which, it will be necessary to advert to in due course. Third, Articles 330 and 332, do not provide for reservations for any particular Scheduled Caste or Scheduled Tribe.

7. Article 81⁴ of the Constitution provides for the composition of the House of the

4 81. Composition of the House of the People.—(1) Subject to the provisions of article 331, the House of the People shall consist of—

(a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

People. Under Article 81(2)(a), there shall be allotted to each State a number of seats in the House of the People in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States. Article 82⁵ provides for the readjustment of the seats after each census. It

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State:

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression —populationll means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed,—

(i) for the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (b) of clause (2) as a reference to the 2001 census.

5 82. Readjustment after each census.—Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust—

(i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and

(ii) the division of each State into territorial constituencies as may be readjusted on the basis of the 2001]census,

provides that upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. For the purposes of Article 81, clause (3) provides that the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published. However, until the relevant figures for the first census taken after 2026 have been published, this shall be construed, for the purpose of sub-clause (a) of clause (2), and its proviso, as a reference to the 1971 census. Regarding the division of each State into territorial constituencies, it has been provided that the reference would be to the 2001 census. Analogous provisions are contained in the proviso to Article 82. Article 170 contains provisions for the composition of the Legislative Assemblies.

8. Article 327 entrusts Parliament with the power to make provisions with respect to elections to either House of Parliament or to the Legislature of a State. Article 329 provides for a bar to the interference by courts in electoral matters including the validity of any law relating to the delimitation of constituencies or the allotment of seats to constituencies made under Articles 327 or 328.

9. Entry 72 of the Union List to the Seventh Schedule deals with elections to Parliament and to the legislatures of States among other Subjects. The legislative domain consequently lies exclusively with Parliament in terms of Articles 245 and 246 read with Entry 72 of List I.

under this article.

10. For the State of Sikkim, in addition to the constitutional provisions already noted, a special provision is contained in Article 371F(f) in terms of which, notwithstanding anything in the Constitution:

“(f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim;”

Representation of Peoples Act, 1950

11. Section 3 of the Representation of the People Act 1950 provides for the allocation of seats to the States in the House of the People and the number of seats which are reserved for the Scheduled Castes and for the Scheduled Tribes as indicated in the First Schedule. Section 7(1), inter alia, provides that the total number of seats in the Legislative Assembly of each State specified in the **Second Schedule** by direct election from Assembly constituencies and the number of seats reserved for the Scheduled Castes and for the Scheduled Tribes of the State, shall be as indicated in that Schedule. As regards the State of Sikkim, specific provisions are contained in sub-section (1A) of Section 7 which reads as follows:

“7. Total number of seats in Legislative Assemblies and assembly constituencies. —

... ..

(1A) Notwithstanding anything contained in sub-section (1), the total number of seats in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1980 (8 of 1980), to be filled by persons chosen by direct election from assembly constituencies shall be **thirty-two**, of which –

- (a) twelve seats shall be reserved for Sikkimese of Bhutia-Lepcha origin;
- (b) two seats shall be reserved for the Scheduled Castes of that State; and
- (c) one seat shall be reserved for the Sanghas referred to in section 25A.

Explanation—In this sub-section “Bhutia” includes Chumbipa, Dophapa, Dukpa, Kagatey, Sherpa, Tibetan, Tromopa and Yolmo.”

12. Sub-section (1A) indicates that the total number of seats in the Legislative Assembly of Sikkim shall be thirty-two. Of these, twelve seats are reserved for Sikkimese of Bhutia-Lepcha origin; two seats for the Scheduled Castes; and one seat for the Sanghas as referred to in Section 25A. Likewise, a specific provision in relation to Sikkim is contained in Section 7A in the following terms:

“7A. Total number of seats in the Legislative Assembly of Sikkim and assembly constituencies.— (1) Notwithstanding anything contained in section 7, in the Legislative Assembly of the State of Sikkim [deemed under the Constitution (Thirty-sixth Amendment) Act, 1975 to be the Legislative Assembly of that State duly constituted], the total number of seats to be filled by persons chosen by direct election from assembly constituencies shall be 32.

(2) Every Assembly constituency referred to in sub-section (1) shall be a single-member constituency.

(3) In the Legislative Assembly so deemed to be duly constituted, the extent of each constituency and the reservation of seats shall be as provided for immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975."

13. The First Schedule to the RP Act provides for the allocation of seats in the House of the People. The allocation of seats is indicated in two segments of the First Schedule:

- (i) The number of seats in the House as constituted in 2004 on the basis of the Delimitation Order of 1976; and
- (ii) The number of seats in the House as subsequently constituted on the basis of the Delimitation Order 2008.

14. The total number of seats in the House of the People allocated to West Bengal is 42, of which 10 are reserved for the Scheduled Castes and 2 for the Scheduled Tribes. Sikkim has a lone seat in the House of the People which is unreserved. The Second Schedule of the RP Act prescribes the total number of seats in the Legislative Assemblies, again bifurcating the determination on the basis of the Delimitation Order of 1976 and the Delimitation Order of 2008. For the State of West Bengal, the Legislative Assembly consists of 294 seats of which 68 are reserved for the Scheduled Castes and 16 for the Scheduled Tribes under the Delimitation Order of 2008. For the State of Sikkim, the Legislative Assembly consists of 32 seats of which two are reserved for the Scheduled Castes and 13 for the Scheduled Tribes. In terms of the provisions of Section 7(1)(a), the Second Schedule indicates that 13 seats reserved for the Scheduled Tribes will comprise one seat for Sanghas and 12 seats for the Sikkimese of Bhutia Lepcha origin.

Delimitation Act, 2002

15. Parliament enacted the Delimitation Act 2002 (Act 33 of 2002) which, came into force on 3 June 2002. The Act provides for the constitution of the Delimitation Commission. The Delimitation Commission is required to readjust the division of each state into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assemblies.

16. Section 8 provides for readjustment of the number of seats in the following terms:

“8. Readjustment of number of seats.—The Commission shall, **having regard to the provisions of articles 81, 170, 330 and 332, ...**, determine,—

(a) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the number of seats in the **House of the People** to be allocated to each State and determine on the basis of the census figures as ascertained at the census held in the year 2001 the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State; and

(b) on the basis of the census figures as ascertained at the census held in the year 1971 and subject to the provisions of section 4, the total number of seats to be assigned to the **Legislative Assembly of each State** and determine on the basis of the census figures as ascertained at the census held in the year 2001 the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State:

...”

17. In terms of Section 8, the Delimitation Commission is empowered to determine the seats to be allocated to each State in the House of the People and in the Legislative Assemblies of every State on the basis of the census figures of 1971. The Delimitation Commission is also empowered to determine the number of seats reserved for the Scheduled Castes and Scheduled Tribes on the basis of the census of 2001.

Section 9 of the Delimitation Act provides for distribution of these seats allocated to each state in the House of the People. Section 10 of the Act pertains to the publication of orders by the Delimitation Commission in accordance with the exercise of its powers under Sections 8 and 9. Section 10(4) specifically states that the orders so published under Section 10 shall apply to every election to the House of the People and to the Assembly if such election is held after the publication of such orders. The orders apply in supersession of all other provisions pertaining to representation and delimitation contained in any other law, order or notification.

Section 10(4) provides as follows:

“(4) Subject to the provisions of sub-section (5), the readjustment of representation of the several territorial constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order **and shall so apply in supersession of the provisions relating to such representation and delimitation contained in any other law for the time being in force or any order or notification issued under such law in so far as such representation and delimitation are inconsistent with the provisions of this Act ...**”

(emphasis added)

18. Section 11 empowers the Election Commission to maintain delimitation orders up-to-date. It provides as follows :

“11. Power to maintain delimitation orders up-to-date.—(1) The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

- (a) correct any printing mistake in any of the orders made by the Commission under Section 9 or any error arising therein from an inadvertent slip or omission; and
- (b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date, so, however, that the boundaries or areas or extent of any constituency shall not be changed by any such notification.

(2) Every notification under this section shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.”

19. The position of the law relating to delimitation can be summarized as follows:

1. The Delimitation Commission is required to allocate seats to every State in the House of the People and the Legislative Assembly on the basis of the Census of 1971. The Commission has to determine the seats reserved for Scheduled Castes and Scheduled Tribes based on the 2001 census. This exercise is required to be undertaken with due regard to the provisions of Articles 81, 170, 330 and 332 of the Constitution of India; and
2. This provision is in line with the Explanation to Article 330 of the Constitution. The Explanation stipulates that the reference to 'population' in Article 330 and Article 332 is to be construed as the population ascertained at the last preceding

census of which the relevant figures have been published. However, the proviso states that the reference to the 'last preceding census' in the Explanation to Article 330 would be construed as a reference to the 2001 census until relevant figures for the first census taken after 2026 have been published.

Factual Context

20. The 2001 census figures indicate that the Scheduled Tribes constitute 5.50% and 20.60% of the total population of the States of West Bengal and Sikkim respectively. The figures are stated below:

States	Total Population	Population of the Scheduled Tribes	Scheduled Tribes as a percentage of the total population
West Bengal	8,01,76,197	44,06,794	5.50%
Sikkim	5,40,851	1,11,405	20.60%

21. The Union Government constituted the Delimitation Commission under the Delimitation Act 2002. The Commission was undertaking the exercise of delimiting Parliamentary and Assembly constituencies when Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 2002⁶. The Act came into effect on 7 January 2003. Section 4 of the amending Act read with the Second Schedule appended to it, amended, inter alia, the Constitution (Scheduled Tribes) Order 1950 and the Constitution (Sikkim) Scheduled Tribes Order, 1978. The effect of the Amending Act of 2002 was that Limboo and Tamang communities

⁶ Amending Act of 2002.

stood included in the list of Scheduled Tribes for the States of West Bengal and Sikkim with effect from 7 January 2003.

22. Upon the completion of the delimitation exercise, on 26 November 2008, the Delimitation of Parliamentary and Assembly Constituencies Order 2008 was issued by the Election Commission. The Delimitation Order stipulated the seats reserved for Scheduled Tribes in the state legislative assemblies as well as the seats reserved in the House of the People, out of the total seats allocated to states. For the States of West Bengal and Sikkim, this is indicated in the following tabulation :

State	Seats reserved for Scheduled Tribes in the House of the People, out of the total seats reserved for the State.	Seats reserved for Scheduled Tribes in the State Legislative Assembly out of the total seats in the Assembly.
West Bengal	2 out of 42	16 out of 294
Sikkim	0 out of 1	13 out of 32 ⁷

23. Though a demand was made by certain castes and tribes designated as Scheduled Castes and Scheduled Tribes for reservation in the House of the People and State Legislative Assemblies by taking into account the additional population as a result of the Amending Act of 2002, the exercise was never actually carried out.

24. In carrying out the delimitation exercise under Section 9 of the Delimitation Act, Section 9(2) provides that the Commission shall publish the delimitation proposals, specify the date after which the proposals shall be considered by it and consider the objections received before finally determining the delimitation of constituencies.

⁷ Out of the 13 seats, 12 were reserved for Sikkimese of Bhutia-Lepcha Origin and 1 for the Sanghas.

Accordingly, in 2005, the Delimitation proposal for Assembly constituencies for the State of Sikkim was published. The number of seats to be reserved for Scheduled Tribes was to be determined on the basis of the 2001 census and the proposal did not contain seats reserved for the Scheduled Tribes of Sikkim. It was stated that unlike clauses 3A and 3B of Article 332, which enables the Delimitation Commission to deviate from the "generalized procedure as contained in the Delimitation Act, 2002 read with Delimitation (Amendment) Act 2003" for certain states, there is no provision which allows a similar deviation from the generic provisions of the Delimitation Act in order to accommodate the newly inducted Scheduled Tribes. Various representations were made to the Delimitation Commission on the ground that the 2001 census alone did not account for the then newly designated Limboo-Tamang Scheduled Tribes for reservations in the constituencies.

25. However, despite the objections, the 2006 Delimitation Notification was published without accounting for the Scheduled Tribes designated as such under the Amending Act of 2002. The 2006 Notification formed the basis of the 2008 Order issued by the Election Commission under RP Act 1950.

26. It is the case of the petitioners that the 2006 Delimitation Notification was, to the extent that it did not accommodate the newly inducted Limboo Tamang Tribes, not corrected by the Election Commission, in the exercise of its powers under Section 11 of the Delimitation Act. Thus, according to the petitioners, the 2008 Order published by the Election Commission under the Representation of People Act 1950, which was a consolidation of the Orders issued by the Delimitation Commission, was defective to the extent that it did not account for the Amending Act of 2002. Its

defects, the petitioners claim, were not duly cured by the Election Commission under Section 9(1)(aa) of the 1950 Act.

27. The petitioners rely on the directions of this Court in the decision in **Virendra Pratap and Another vs Union of India and Others**. A writ petition was instituted seeking directions against the Election Commission to take steps for proper representation by identifying constituencies for reservations of the Scheduled Tribes in the Uttar Pradesh Assembly Elections, in accordance with proportional representation in terms of Article 330 of the Constitution.⁸ While agreeing that the Scheduled Tribes had the right to proportional representation under Articles 330 and 332 of the Constitution, this Court directed the Election Commission to consider the case of the Scheduled Tribes and take appropriate steps to ensure their representation in the House of the People and the Legislative Assembly "in the State". The Court clarified that while the Election Commission was not being directed to complete the exercise before the upcoming assembly elections, it was at liberty to complete the exercise, without disturbing the election schedule:

"8. Accordingly, we dispose of the writ petition by directing the Election Commission of India, **to consider the case of the Scheduled Tribes, as indicated in the writ petition and to take appropriate steps for their representation in the Lower Houses, both in the Parliament, as well as in the State Assemblies in accordance with the provisions of the Constitution**. The petitioners will be at liberty to supply necessary details of the figures indicated to the Election Commission of India and the Election Commission may itself also obtain figures from the Registrar General, as suggested by the learned

⁸ (2012) 11 SCC 764.

Attorney General and, thereafter, proceed to take steps in accordance with the provisions of the Constitution for due representation of the Scheduled Tribes population.”

(emphasis added).

28. The 2008 Delimitation Order came up for the consideration of this Court in 2012 in its decision in the case of **Virendra Pratap** (*supra*) where the Election Commission as well as the then Attorney General had taken the position that they would carry out the relevant exercise by considering the figures *de hors* the 2001 census. The Commission was then directed to undertake the relevant steps to ensure proportional representation of the tribes, in accordance with the Constitution.

29. The Central Government appears to have taken the position (as the Election Commission informs the Court on affidavit) that the benefit of reservation should be extended to all those castes and tribes which were designated by the Amending Act of 2002 and thereafter until 31 May 2012. A succession of three Ordinances came to be promulgated by the President under Article 123 of the Constitution. The first of them called the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies Ordinance 2013 was promulgated on 30 January 2013, *inter alia*, empowering the Election Commission to readjust the representation of SCs/STs in Parliamentary and Assembly constituencies in all States and Union Territories on the basis of the revised population of 2001 estimated by the Registrar General by taking into account the relevant Acts which were enacted by Parliament between 2002 and 31 May 2012. Though the Ordinance was sought to be replaced by an Act of Parliament, the Bill was referred

to the Parliamentary Standing Committee which, in its Report dated 5 May 2013, recommended the passage of the Bill. The Bill was, however, not converted into law.

30. A second Ordinance was issued on 5 June 2013. The Ordinance lapsed. A third Ordinance was promulgated on 27 September 2013.

31. In pursuance of the third Ordinance, the Registrar General of India completed the exercise of estimating the revised population figures of Scheduled Castes and Scheduled Tribes by taking into account changes that were made under Article 342 of the Constitution by the inclusion of additional castes and tribes up to 31 May 2012. The Election Commission made necessary adjustments **only in respect of the State of Uttar Pradesh**, while the provisions of the third Ordinance were in force. However, the Election Commission has stated in its counter that in terms of the revised Scheduled Castes and Scheduled Tribes' population figures which were ascertained by the Registrar General of India in 2013, an increase of one seat each for the Scheduled Castes and the Scheduled Tribes was found in respect of West Bengal while **no increase was found for seats for Scheduled Castes and Scheduled Tribes in Sikkim**. This, the Court is informed, was as a result of the provisions of Section 7A of the RP Act.

32. The third Ordinance which was promulgated by the President in 2013 lapsed. No law has been enacted by Parliament either in terms of the provisions of the Ordinance or bearing on the subject matter of the dispute in the present case. However, in 2018, the Union Ministry of Home Affairs⁹ initiated an exercise to increase the seats in

⁹ "MHA"

the Legislative Assembly from 32 to 40 so as to provide for the reservation of seats for the Limboo and Tamang Tribes. On 30 July 2005, a communication was addressed by MHA to the Chief Secretary of the State of Sikkim, proposing that the State could choose one of three options for implementing it:

“(i) The reservation for Limboos and Tamang may be considered out of the 17 un-reserved Assembly seats at present on the basis of proportion of their population to the total population, without increasing the size of the State Legislature;

(ii) The strength of State Legislature may be increased to 40 and reservation for Limboos and Tamangs may be considered out of 25 seats (17 un-reserved at present + 8 additional seats) subject to the condition that in the event of any new communities being declared as ST in future they may also be accommodated within the over all size of 40 without having to request further increase in the number of seats;

(iii) The strength of the State Legislature may be increased to 60 to bring at par with other States and in conformity with Article 171(1) and reservation for Limboos and Tamangs may be considered in proportion to their population out of the 45 seats (17 un-reserved seats + 28 additional seats) subject to the condition that in the event of any new communities being declared as ST in future they will also be accommodated within the over all strength of 60 without having to ask for any further increase in the strength of the Assembly.”

33. The Chief Secretary of the State of Sikkim responded to the communication stating that the second option was acceptable in terms of which the seats in the Sikkim State Legislative Assembly would be increased from 32 to 40 so as to allow reservation for Limboo and Tamang Scheduled Tribes. On 4 April 2018, MHA again, initiated the exercise to increase the seats in the Legislative Assembly of Sikkim from 32 to 40 and to provide reservation for Limboo and Tamang Tribes while seeking the

views of the Election Commission. The Election Commission responded on 4 April 2018. Thereafter, MHA addressed a communication to the Secretary of the Legislative Department in the Ministry of Law and Justice intimating that a "revised draft cabinet note and draft RPA (Amendment) Bill 2018 had been seen and approved by the Honourable Home Minister of India". No further steps seem to have taken place thereafter after the exchange of these communications.

34. Counter affidavits have been filed in these proceedings by the Election Commission of India, the State of West Bengal and the State of Sikkim. The Election Commission has stated that presently, it has no power to make any changes in the delimitation orders passed by the Delimitation Commission in the States of West Bengal and Sikkim. According to the Election Commission, readjustment of seats requires an enabling provision in the law empowering it to undertake such an exercise. No action has been taken in the matter by MHA or by the Union and hence according to the Election Commission, it is unable to proceed further. The Election Commission also states that readjustment of seats would involve necessary amendments to the RP Act, among other legislation.

35. The State of West Bengal, has stated that in terms of the census of 2011, 52,96,953 persons belong to the Scheduled Tribes representing 5.8% of the total population and consequently, 6% of the seats in the Legislative Assembly are reserved for the Scheduled Tribes. Sixteen seats are stated to have been reserved in the Legislative Assembly and two seats in the Lok Sabha for the Scheduled Tribes. On 15 February 2006, a notification was published by the Delimitation Commission allotting 42 seats

in the House of People and 294 in the Legislative Assembly to the State of West Bengal. The State of West Bengal has also stated that the delimitation notification was based on the census of 2001 and any exercise of delimitation would have to take place within the ambit and purview of Delimitation Act 2002.

36. The State of Sikkim has stated that the Government of Sikkim has been repeatedly requesting the Government of India to take immediate steps to provide reservation to the Limboo and Tamang Tribes in the Legislative Assembly of the State. The correspondence between the State and Union Governments, as detailed in the preceding paragraphs, has however, not led to the implementation of the proposal to increase the seats in the legislative assembly of the State.

Submissions on behalf of the Petitioners

37. We have heard Mr Prashant Bhushan and Ms Pritika Kumar, counsel appearing on behalf of the petitioners.

38. The petitioners are aggrieved by the non-representation of the Limboo and Tamang Scheduled Tribes in the House of the People and the State Legislative Assemblies, in accordance with Articles 330 and 332 of the Constitution. The provisions stipulate that the Scheduled Tribes will be given reservations in the House of the People as well as the Legislative Assemblies, and that this reservation shall, as nearly as may be, proportionate to their population to the total population of the state. They challenge the 2006 Notification and 2008 Order on the ground that the Delimitation Commission and the Election Commission have overlooked the Amending Act of

2002 which included, inter alia, these two tribes to the Scheduled Tribes' List. Accordingly, it has been submitted that the two orders, are defective and an election notification based on these orders, would also be in violation of Articles 330 and 332.

39. The primary submission urged on their behalf is that unlike Article 15 of the Constitution, which contains enabling provisions for reservation, Articles 330 and 332 contain a mandate for reservation. Moreover, it has been submitted that the mandate is that proportional reservation has to be provided for the Scheduled Castes and Scheduled Tribes based on the ratio which their population bears to the total population of the State. Hence, it has been urged:

- **First**, that there is a constitutional mandate and the entitlement of the Limboo and Tamang communities as Scheduled Tribes which stems from the Amending Act of 2002, whereby they were designated as Scheduled Tribes. Accordingly, it is the plain duty of the Union Government and the Election Commission to act in pursuance of their statutory and constitutional powers. To the extent that the 2006 Notification and the 2008 Order and Section 7(1A) of the RP Act do not account for the Limboo and Tamang Scheduled Tribes, they violate this mandate;
- **Second**, the Election Commission is empowered, under Article 324 of the Constitution, to issue directions for the readjustment of seats to reserved constituencies;
- **Third**, the provisions of Section 11 of the Delimitation Act and Section 9(1)(aa) of the Representation of People Act 1950 sufficiently empower the Election

Commission to correct any omission. Such an omission, it has been urged, took place when the Delimitation Commission did not include any seats in the reservation list for Limboo and Tamang communities; and

- **Fourth**, the judgment of this Court in **Virendra Pratap's case** (supra), which was rendered on 10 January 2012, was not confined only to the Respondents in that case, namely, the State of Uttar Pradesh. Just as in the manner that the Election Commission implemented the judgment for the State of Uttar Pradesh, it ought to have done the same thing for other communities designated as Scheduled Castes or Scheduled Tribes since 2002.

Submissions on behalf of the Respondents

40. On the other hand, it has been urged by both Mr KM Natraj, Additional Solicitor General appearing on behalf of the Union of India and Mr Amit Sharma, counsel appearing on behalf of the Election Commission that:

- **First**, the exercise of delimitation has to be carried out within the framework of the Delimitation Act 2002.
- **Second**, the legislative framework for reservation of seats requires an amendment to the RP Act in order to provide for such reservations. Such an amendment is exclusively the mandate of Parliament, and not the Election Commission. In the absence of an enabling legislation, the powers under Article 324 alone, would not warrant such an exercise at the instance of the Election Commission. In fact, in order to create such an enabling provision, three Ordinances were promulgated in 2013, which eventually lapsed and

the power could not be granted to the Election Commission.

- **Third**, the power under Section 11 of the Delimitation Act 2002 cannot be extended to mean the power to carry out readjustment of seats or to provide for reservations for additional castes and tribes in the manner which the petitioners suggest.

41. Mr Rakesh Dwivedi and Mr Ashok Panda, senior counsel appearing on behalf of the State of West Bengal have broadly adopted the submissions of the Election Commission regarding the need for an enabling statutory amendment. Mr Rakesh Dwivedi has highlighted that the provisions of the Constitution do not earmark reservations for each SC/ST separately but provide for reservations for the SC/STs as a whole in relation to each state in the House of People and legislative assemblies.

42. Against this backdrop, the petitioners seek directions to give effect to the constitutional right of the Limboo-Tamang Scheduled Tribes. They seek directions to the Delimitation Commission to amend its 2006 Notification to that extent; and directions to the Election Commission, to incorporate the amendments to its 2008 Order; and to make corrections to the Delimitation Commission's 2006 Notification and the 2008 Order. As they stand, the 2006 Notification and 2008 Order, are based on the 2001 census and do not incorporate the subsequent additions/adjustments made to the Scheduled Tribes Orders whereby, inter alia, the Limboo Tamang Tribes were designated as Scheduled Tribes.

Delimitation Notification of 2006 and the Delimitation Order of 2008

43. Entry 72 of the Union List of the Seventh Schedule deals with elections to Parliament and the State Legislatures. Article 327 of the Constitution empowers Parliament to make provisions by law with respect to all matters relating to or in connection with elections to either House of Parliament or to the legislatures of the States including:

- (i) Preparation of electoral rolls;
- (ii) Delimitation of constituencies; and
- (iii) All matters necessary for securing the due constitution of the House.

44. The Delimitation Act 2002 is an outcome of the exercise of the power to legislate on the subject of delimitation. The provisions of the Act which have been noted earlier, indicate that the statutory function of the Delimitation Commission includes specifying reserved seats in the Legislative Assemblies for the Scheduled Castes and Scheduled Tribes.

45. The Election Commission has a broad mandate in terms of Article 324 in regard to the superintendence, direction and control of elections. Article 324(1) provides for the superintendence, direction and control of the preparation of the electoral rolls and stipulates that the conduct of all elections to Parliament and to the State Legislature shall be vested in the Election Commission. The Constitution has drawn a careful balance between the broader powers of the Election Commission over the superintendence, direction and control of electoral rolls and the conduct of

elections on the one hand, and the legislative power of Parliament under Article 245 and Article 246 on the other hand read with Entry 72 of the Union List in the Seventh Schedule. The power of Parliament in its legislative domain is coupled with its constitutional function under Article 327. The Election Commission has categorically stated before this Court that the powers which it exercises for the purposes of delimitation are governed by the statute which has been framed by Parliament under Article 327, namely, the Delimitation Act 2002.

46. Following upon the judgment in *Virendra Pratap (supra)*, three Ordinances were promulgated in order to create enabling provisions for the Election Commission to undertake an exercise of updating the Delimitation Orders in accordance with the additions/changes made to the Scheduled Tribes Order subsequent to the 2001 census.

47. The statutory framework for the enactment of the 2006 Notification and the 2008 Order is as follows:

1. Under Section 4(2), the Delimitation Commission is required to readjust the division of each state in territorial constituencies for elections on the basis of the statutorily prescribed census;
2. Under Section 8, the Delimitation Commission has to determine, having regard to the provisions of Articles 81, 170, 330 and 332, the total number of seats to be assigned to the legislative assembly of each state and determine on the basis of the prescribed census figures, the number of seats to be reserved for SCs and STs of the States;

3. Under Section 9, the Delimitation Commission has to distribute the seats in the House of the People allocated to each state and seats assigned to the Legislative Assemblies of the States based on the 1971 census figures and delimit them in accordance with, Articles 81, 170, 330 and 332 of the Constitution, as referred to in Section 8;

For this, the Delimitation Commission is required to publish its delimitation proposals in the Gazette of India and of the States, specifying the date for its further consideration. It is then required to consider objections and suggestions by way of public sittings in the States as it thinks fit and then finally determine the delimitation of parliamentary constituencies and assembly constituencies of each state.

4. This Order would then be published in the Gazettes and upon publication, in accordance with Section 10(2) of the Act, "have the force of law and shall not be called in question in any court". The readjustment and delimitation provided for in such an order shall, in accordance with Section 10(4) of the Act, "apply in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order and shall so apply in supersession of the provisions relating to such representation and delimitation contained in any other law for the time being in force or any order or notification issued under such law in so far as such representation and delimitation are inconsistent with the provisions of this Act"; and
5. Section 4 (5) of the RP Act states that the extent of Parliamentary constituencies

shall be as provided by the Delimitation Orders under the Act of 2002. However, there is an exception in favour of the States of Arunachal Pradesh, Assam, Jharkhand, Manipur and Nagaland. So, except the states mentioned in Sections 10A, and 10B, the other states' parliamentary constituencies and the extents thereof will be determined by Orders passed under the 2002 Act. The 2006 Delimitation Notification impugned herein is one such Order in relation to the State of Sikkim.

48. The 2006 Delimitation Notification was made in pursuance of the powers under Sections 10, 9(2) and 4(2) of the Delimitation Act 2002. It delimited constituencies for Parliamentary and Assembly elections in the State of Sikkim. The total number of seats allocated in the House of the People to the State was one and the total number of the seats assigned to the Legislative Assembly was thirty two, out of which two were reserved for SCs, twelve for Sikkimese of Bhutia Lepcha Origin and one for Sanghas. The 2006 Notification additionally specified the Constituencies and their extent for the Legislative Assembly as well as for the Parliament.

Issues

- The Petitioners have suggested first, that the Delimitation Commission must amend the 2006 Notification to reserve seats for Limboo and Tamangs under Article 332 and second, the Election Commission must use the power under Section 9(1)(aa) to amend the 2008 Order in accordance with the amendments made to the 2006 Order by the Delimitation Commission;

- Alternatively, the petitioners have suggested that the Election Commission use its powers under Section 11 and Section 9 of the Delimitation Act and the RP Act respectively to correct both the 2006 Order and the 2008 Order by reserving seats for the Limboo Tamang STs in accordance with the formula stated in Articles 330 and 332.

49. Accordingly, the issues that arise before us pertain to the scope of the powers of the two bodies – the Delimitation Commission and the Election Commission to make the above changes and the scope of this Court's power to make the above directions.

Analysis:

Whether Delimitation Commission can amend the 2006 Notification under the Delimitation Act

50. Article 82 of the Constitution provides that “upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine”

51. Article 327 provides that “Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of the State including the preparation of rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such Houses”.

52. The Delimitation Commission is a statutory body under the Delimitation Act. The 2006 Delimitation Notification is duly published in the Gazette of India and of the States in the manner prescribed under Sections 4, 8 and 10 of the Delimitation Act. In accordance with Section 10(2), the Order has the force of law, and cannot be called into question before any court of law.

53. In **Meghraj Kothari v. Delimitation Commission**, rejecting the argument that the Delimitation Act was passed under Article 82 and not Article 327 and that the Act was thus exempt from the bar under Article 329, this Court has held that the Act was made under Article 327. Thus, even though the notification issued under Section 10 is not a statute, it has been held to have the effect of a law relating to the delimitation of constituencies or allotment of seats under not only Section 10, but also under Article 327 of the Constitution.¹⁰

54. The delimitation of constituencies can only be objected to, and the objections entertained by the Commission when they are made before the Commission *prior to* the date specified by the Commission. Once the Orders made under Sections 8 and 9 are published under Section 10, they cannot be objected to. This Court has observed:

“20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be

¹⁰ *Meghraj Kothari vs Delimitation Commission and Ors*, 1966 SCC OnLine SC 12 paras 10, 11.

reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court.

21. It is true that an order under Section 8 or 9 published under Section 10(1) is not part of an Act of Parliament, but its effect is to be the same.

...

33. In the instant case the provision of Section 10(4) of the Act puts orders under Sections 8 and 9 as published under Section 10(1) in the same street as a law made by Parliament itself which, as we have already said, could only be done under Article 327, and consequently the objection that the notification was not to be treated as law cannot be given effect to."

55. The 2006 Notification, having the force of law under Article 327, is protected also by virtue of Article 329 of the Constitution, which reads as follows:

"Notwithstanding anything in this Constitution (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, **shall not be called in question in any court;**"

56. Thus, in view of Article 329 of the Constitution, the Delimitation Notification of 2006 cannot be called into question. Any changes to the 2006 Notification, could only have been made in accordance with the Delimitation Act. The Act envisages

changes/suggestions only until the publication of the final notification, consequent to which, the notification assumes the force of law in supersession of any other law for the time being in force. In view of Article 329, it is beyond the realm of judicial review.

57. The Delimitation Act only provides for changes prior to the final notification. Once published, the Notification cannot be amended even by the Delimitation Commission under the 2002 Act.

The question is thus answered in the negative.

Whether the Election Commission can Amend the 2008 Order to incorporate those changes

The Scope of powers of the Election Commission under Article 324 of the Constitution of India

58. Article 324 vests wide-ranging powers in the Election Commission. The expressions "Superintendence, direction and control" as well as "elections" have been interpreted widely to mean the entire process of elections which comprises several stages.¹¹ The power under this Article, though plenary, is not untrammelled, but is conditioned by the provisions of the statutes governing the field.¹²

¹¹ *Shambhu Prasad Sharma vs Charandar Mahant*, 2023 11 SCC 390.

¹² *SS Dhanoa vs Union of India*, AIR 1991 SC 1745

59. In **Mohinder Singh Gill v. The Chief Election Commissioner**,¹³ a Constitution Bench of this Court in the context of the Election Commission's power to order a re-poll and cancel a poll, clarified that while the Commission has plenary powers under Article 324, this power is subject to competent legislation enacted by Parliament under Article 327 of the Constitution. The Election Commission cannot, the court held, act in a manner that is contrary to the letter of the law and it is subject to scrutiny for its actions, notwithstanding the scope of its powers under Article 324. This Court held as follows:

“Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition¹⁴”

60. The power of the Election Commission under Article 324 is meant to supplement and not supplant the law made by the Parliament and must be read in harmony with the provisions of the statutes governing the field - which include the Delimitation Act of 2002 and the RP Act 1950.

Scope of Powers of the Election Commission under RP Act.

61. Under Section 8 of the RP Act, the Election Commission is to consolidate Orders made by the Delimitation Commission under Section 10 and under Sections 10-A

¹³ AIR 1978 SC 851.

¹⁴ *ibid* para 92.

and 10-B of the Delimitation Act. The consolidation has been carried out by the Election Commission and the 2008 Delimitation of Parliamentary and Assembly Constituencies Order is an outcome of this consolidation.

62. Section 8(1), RP Act uses the words "having regard to all the orders referred to in sub-section (5) of Section 4 and sub-section (3) of Section 7 relating to delimitation of parliamentary and assembly constituencies in all States and Union Territories". These provisions in turn, refer to the extent of the constituencies as determined by the Delimitation Commission under the Delimitation Act 2002. Once the extent is determined, the Election Commission's role under Section 8, is (i) to update the "description" of the extent of the constituencies, without altering the extent and (ii) to consolidate the orders into one order, under clauses (a) and (b) respectively. Neither of these clauses pertains to incorporating provisions relating to the reservations for newly designated Scheduled Tribes.

63. There is a duty to consolidate the Orders, as signified by the use of "shall" in Section 8, but that duty specifically pertains to consolidation of Orders made by the Delimitation Commission. Once consolidated in this manner, which is what the Order of 2008 does, Section 9, RP Act comes into operation.

64. The marginal note to Section 9 is titled "Power of Election Commission to maintain Delimitation Order up-to-date". Unlike Section 8, Section 9 uses phrase "may". Further, Section 9(1)(aa), which the petitioners have relied on, encompasses the power to :

“(aa) make such amendments in the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 as appear to it to be necessary or expedient for consolidating with that Order any notification or order relating to delimitation of Parliamentary or assembly constituencies (including reservation of seats for the Scheduled Castes or the Scheduled Tribes in such constituencies) issued under Section 8-A of this Act or any other Central Act”.

65. The provision uses the phrase “*as appears to it to be necessary or expedient*”. The exercise of discretion arises when the authority in question is satisfied of the necessity or expediency of its exercise. Justice GP Singh in his book *Interpretation of Statutes* writes:

“Ordinarily, the words “May” and “it shall be lawful” are not words of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. “They are both used in a statute to indicate that something may be done which prior to it could not be done”¹⁵

66. This Court has held that it is possible that a statute confers powers on authorities, which are to be exercised at their discretion, and is couched in permissive terms such as “it may be lawful” or “it may be permissible”. However, in certain cases, the power, even though discretionary, is coupled with a duty to act.

67. The present provision implies that if the Election Commission considers it necessary and expedient, it may consolidate with the 2008 Order “any notification or order relating to delimitation” of constituencies. The Election Commission has the

¹⁵ Justice GP Singh, *Interpretation of Statutes*, 15th Edition pg 365 para 5.6.11.

discretion to consolidate with the 2008 Order any notification or order that **relates to delimitation**, and not all orders and notifications whatsoever. It is so to speak, not a general exercise of updating the 2008 Order with any notification or order that follows the 2008 Order. The consolidation has to be done only with *first*, such a notification or order that relates to delimitation of constituencies and *second*, issued under Section 8A of this Act or under any other Central Act.

68. Amending Act of 2002 which designates Limboo and Tamang Scheduled Tribes is enacted under Articles 341 (2)¹⁶ and 342 (2)¹⁷ of the Constitution. It does not relate to delimitation, but to designation of certain Castes and Tribes as Scheduled Castes and Tribes for the purpose of the Article 366 of the Constitution.

69. Even if the discretion, as apparently vested in the Election Commission to act is taken to be coupled with a duty to act, the duty arises only when the conditions for its exercise are fulfilled¹⁸. For the Election Commission to act, there must be an order that relates to delimitation and such an order must have been issued under Section 8-A of this Act or under a Central Act. Neither of these conditions is present as far as the Amending Act of 2002 is concerned, to warrant the exercise of power under Section 9(1)(aa) of the RP Act.

70. Thus, the RP Act does not envisage a duty vested in the Election Commission to amend the 2008 Order to include the 2002 Amending Act.

¹⁶ (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause of 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.

¹⁷ (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..."

¹⁸ *Official Liquidator vs Dharti Dhan*, AIR 1977 SC 740.

Section 9, RP Act and Section 11, Delimitation Act

71. The petitioners have adverted to these provisions, as an alternative route to incorporate the mandate of Articles 332 into the 2006 Notification and 2008 Order. They seek a mandamus against the Election Commission generally in accordance with Article 332 for the Sikkim State Legislative Assembly, on the strength of Section 9 of the RP Act and Section 11 of the Delimitation Act.

72. Section 11 deals with the power of the Election Commission to maintain delimitation orders up to date while Section 9 deals with the same power specifically in respect of the Delimitation Order 2008. The salient aspects of these provisions are:

- Both the Sections use the word “may” in delineating the power of the Election Commission;
- Clause (a) of sub-section (1) of each of the provisions pertains to correction of printing mistakes in the orders generally and in the 2008 Order respectively, or any “error arising therein from inadvertent slip or omission”; and
- Clause (b) of sub-section (1) deals with necessary amendments on account of alteration in the boundaries or names.

73. We have already addressed Section 9(1)(aa). The only other relevant clause for our purpose is clause (a) of sub-section (1) of Section 11 of the Delimitation Act and Section 9 of the RP Act. Clause (a) deals with – first, correction of printing mistakes in orders or the 2008 order respectively and second, correction of “any error arising

therein from an inadvertent slip or omission”.

74. The invocation of this clause can take place only if we were to find the non-inclusion of the Limboo Tamang Scheduled Tribes in the 2006 Notification and 2008 Order as an “error” arising out of an inadvertent slip or omission. However, the non-inclusion of these Scheduled Tribes in the two Orders is attributable to the fact that the Constitution itself mandates the delimitation exercise to be carried out in accordance with the figures of the 2001 census alone and that the subsequent changes to the ST Order have not been accordingly assimilated with the 2001 figures. Consequently, the delimitation exercise undertaken in 2006 could not account for the Amending Act of 2002. This was the specific issue that the Court addressed in **Virendra Pratap (supra)** by stating that the Election Commission may obtain the relevant figures that were **de hors** the 2001 census.

75. Thus, the non-inclusion of the Limboo Tamang STs is not attributable to a mere error arising out of an inadvertent slip or omission- which are the only grounds under which the Orders can be altered by the Delimitation Commission or the Election Commission.

76. The Explanation to Article 170 of the Constitution, which deals with the composition of legislative assemblies prescribes that the “population” means population as determined at the last preceding census of which figures have been published. The proviso appended to it further states that the last preceding census would mean the 2001 census, until the first post-2026 census is carried out. Section 8 of the Delimitation Act, states that the power to readjust the number of seats will be

exercised having due regard inter alia to Article 170. Further clauses (a) and (b) state that the Commission shall determine the number of seats to be reserved in the House of People as well as the Legislative Assemblies, in accordance with the census figures of the 2001 census.

77. The Delimitation Commission, under Section 8, is supposed to act according to the 2001 census in determining the number of seats to be reserved. Their non-inclusion cannot be termed as an "error arising out of an inadvertent slip" within the meaning of Section 9(1)(a) of the RP Act.

78. The non-inclusion cannot also be termed as an "omission" either. The principle of statutory interpretation, *noscitur a sociis*, states that the meaning of a word is judged by the company it keeps¹⁹. The general term "omission" in the above clauses derives its flavour from the more specific preceding phrase "inadvertent slip" and also, "printing mistakes" as specified in the same clause. The term "omission" does not cover the situation of the Scheduled Tribes designated as such after the 2001 census, and thereby excluded from consideration in a subsequent delimitation exercise.

79. Therefore, this non-inclusion arises due to a lack of an enabling statutory provision which would accommodate post-census changes to the delimitation exercise. The omission envisaged by Section 9 of the RP Act and Section 11 of the Delimitation Act refers to errors or omissions of a ministerial nature. The entirety of the ambit of clause (a) is to allow the Election Commission to correct printing mistakes and

¹⁹ GP Singh (supra) pg 391 para 5.8.2.

inadvertent slips or omissions that result in error. This, evidently, would not extend to making substantial modifications in the delimitation which has been made by the Delimitation Commission in the exercise of its statutory power.

Proportional Representation

80. As regards the State of Sikkim, Section 7(1A) of the RP Act was inserted by Act 8 of 1980 with effect from 1 September 1979. Section 7(1A) provides that out of a total of thirty two seats in the Legislative Assembly, twelve seats are reserved for persons of a Sikkimese Bhutia-Lepcha origin and one seat for the Sanghas referred to in Section 25A (apart from two seats for the Scheduled Castes).

81. The provisions of sub-section (1A) of Section 7 need to be contrasted with those of sub-sections (1B)²⁰ and (1C) which provide for reservation for the "Scheduled Tribes" in the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura. The purpose of emphasizing this distinction is that the reservation which is contemplated by clause (a) of sub-section (1A) of Section 7 is in the character of the Bhutia-Lepcha as a section. This is distinct from reservations for tribes.

82. Article 371F of the Constitution contains special provisions for the State of Sikkim and begins with a *non-obstante* clause. Clause (f) empowers Parliament to make provision for the number of seats in the Legislative Assembly which may be filled by

²⁰ (1-B) Notwithstanding anything contained in sub-section (1), in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, to be constituted at any time after the commencement of the Representation of the People (Third Amendment) Act, 1987 (40 of 1987),— (a) [fifty-nine seats] shall be reserved for the Scheduled Tribes in the Legislative Assembly of the State of Arunachal Pradesh; [(1-C) Notwithstanding anything contained in sub-section (1), twenty seats shall be reserved for the Scheduled Tribes in the Legislative Assembly of the State of Tripura to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1992

candidates “belonging to such sections” and for the delimitation of constituencies. Parliament is entrusted with this enabling power “for the purpose of protecting the rights and interest of different sections of the population of Sikkim”.

83. Article 371F creates special provisions for setting apart seats in the Legislative Assembly for such sections as Parliament may seek to legislate upon. It was in exercise of the power under Article 371F(f) that Parliament enacted the provision enabling the reservation of twelve seats for Sikkimese of Bhutia-Lepcha origin under Section 7(1A) of the RP Act.

84. The validity of Section 7(1A) was challenged before this Court in **RC Poudyal** (supra). Justice MN Venkatachaliah (as the learned Chief Justice then was) delivered the judgment of the majority, in the Constitution Bench and observed that the principle of proportionality specified in Article 332(3) is a broad and general principle which is not intended to be arithmetically precise. Article 332(3)(a) was, hence, together with Article 333, regarded as illustrative of the broad principle of proportionality. The learned Judge observed:

“**126.** An examination of the constitutional scheme would indicate that the concept of ‘one person one vote’ is in its very nature considerably tolerant of imbalances and departures from a very strict application and enforcement. The provision in the Constitution indicating proportionality of representation is necessarily a broad, general and logical principle but not intended to be expressed with arithmetical precision. Articles 332(3-A) and 333 are illustrative instances. The principle of mathematical proportionality of representation is not a declared basic requirement in each and every part of the territory of India. Accommodations and adjustments, having regard to the political maturity, awareness and

degree of political development in different parts of India, might supply the justification for even non-elected Assemblies wholly or in part, in certain parts of the country. The differing degrees of political development and maturity of various parts of the country, may not justify standards based on mathematical accuracy. Articles 371-A a special provision in respect of State of Nagaland, 239-A and 240 illustrate the permissible areas and degrees of departure. The systemic deficiencies in the plenitude of the doctrine of full and effective representation has not been understood in the constitutional philosophy as derogating from the democratic principle. Indeed, the argument in the case, in the perspective, is really one of violation of the equality principle rather than of the democratic principle. The inequalities in representation in the present case are an inheritance and compulsion from the past. Historical considerations have justified a differential treatment."

85. The Court held that the special provision under Section 371F(f) is based on historical considerations and compulsions peculiar to the State of Sikkim and based on the conditions that led to the admission of the State into the Union of India. The Court noted:

"**128.** From 1975 and onwards, when the impugned provisions came to be enacted, Sikkim has been emerging from a political society and monarchical system into the mainstream of a democratic way of life and an industrial civilisation. The process and pace of this political transformation is necessarily reliant on its institutions of the past. Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals. The provisions of clause (f) of Article 371-F and the consequent changes in the electoral laws were intended to recognise and accommodate the pace of the growth of the political institutions of Sikkim and to make the transition gradual and peaceful and to prevent dominance of one section of the population over another on the basis of ethnic

loyalties and identities. These adjustments and accommodations reflect *political expediencies* for the maintenance of social equilibrium. The political and social maturity and economic development might in course of time enable the people of Sikkim to transcend and submerge the ethnic apprehensions and imbalances and might in future — one hopes sooner — usher in a more egalitarian dispensation. Indeed, the impugned provisions, in their very nature, contemplate and provide for a transitional phase in the political evolution of Sikkim and are thereby essentially transitional in character."

86. The Court upheld the provision on the ground that Parliament had considered it necessary "in the admission of a strategic border State into the Union".

87. It was specifically argued in **RC Poudyal** that **(i)** Article 371F(f) would require parity between all sections of the State's population and not only Bhutias and Lepchas and **(ii)** since the Bhutias and Lepchas, in addition to being sections covered under Article 371F(f), are also Scheduled Tribes and are governed by the formula stipulated under Article 332(3). Hence, it was urged that they had to be treated at par with the other Scheduled Tribes in the state and given only proportionate representation in accordance with the formula prescribed under Article 332(3). To the extent that Section 7(1A) gave them greater representation than their proportion in the total population of the state, it was argued, that it violated Article 14 and Articles 332 of the Constitution.

88. Rejecting the submission, the Court observed:

- First, Article 371F(f) is a "**merely enabling**" provision. Consequently, as the Court noted, "if reservation is made by Parliament for only one section, it must,

by implication, be construed to have exercised the power respecting the other sections in a negational sense". Hence, in the view of the Court, the provision "enables the reservation confined only to a particular section". The Court held thereby that Parliament could not be directed to treat all sections of the state with parity; and

- Second, on whether Section 7(1A) violated the mandate of Article 332 (3) it was held that, the operational effect of the non-obstante clause of Article 371F(f) was that it allowed a departure from Articles 330 and 332. This departure, it was held, was permissible in view of the special considerations operating in the state of Sikkim.

89. Thus, the following position emerges in view of the judgment in **RC Poudyal** (supra)

- (i) Article 371F which make special provisions with respect to the State of Sikkim is a measure which was adopted bearing in mind the historical circumstances pertaining to the admission of the State as an integral part of the Union of India;
- (ii) The antecedent historical circumstances leading to Article 371F could legitimately be borne in mind by Parliament in designing a special measure for a certain section of the population of Sikkim and while doing so, Parliament was not bound to treat all the sections of the population alike;
- (iii) Article 371F makes a departure from the principle embodied in Article 332(3) which is evident from the *non-obstante* clause in the former; and

- (iv) The principle of proportionality itself is a broad and general guiding principle that is adopted in Articles 330 and Article 332 but as a concept, it is not capable of application with arithmetic precision or exactitude.

90. The petitioners argue that **RC Poudyal** (*supra*) upheld Article 371F and thereby permitted a departure from the principle of **proportionality** under Article 332(3) but not a departure from the principle of **reservations** per se, under that provision. They argue that the principle of reservations under Article 332(3) continues to apply and to the extent it is not applied to Limboo Tamang Scheduled Tribes under Section 7(1A), the Section is ultra vires Article 332.

91. The judgment in **RC Poudyal** (*supra*) contains the following observations:

“133. Sri Jain contended that Bhutias and Lepchas had been declared as Scheduled Tribes under the Constitution [Sikkim Scheduled Tribes] Order, 1978 and that the extent of the reservation in their favour would necessarily be governed by the provisions of Article 332(3) of the Constitution which requires that the number of seats to be reserved shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Schedule Tribes in the State bears to the total population of the State. **But, in our opinion, clause (f) of Article 371F is intended to enable, a departure from Art. 332(3). This is the clear operational effect of the non obstante clause with which Article 371F opens**
...

181. This provision empowers Parliament to make provision prescribing the number of seats in the Legislative Assembly in the State of Sikkim which may be filled in by candidates belonging to the different sections of the population of Sikkim with a view to protect the rights and interests of those sections. **The non-obstante clause in Article 371-F enables**

Parliament to make a departure from the ratio contemplated by Article 332 (3) within the limitation which is inherent in the power conferred by Article 371-F, i.e., not to alter any of the basic features of the Constitution. It is, therefore, necessary to examine whether in providing for reservation of twelve seats out of thirty-two seats for Bhutias and Lepchas Parliament has acted in disregard of the said limitation."

92. The above paragraphs form parts of the separately authored opinions of Justice Venkatachaliah and Justice Agarwal respectively. While para 133 states that Article 371F permits a departure from Article 332 (2), as a whole, para 181 implies that the departure is permissible only from the *ratio* contemplated in Article 332(3), as opposed to the Article as a whole.
93. We believe that since Article 371F uses the non-obstante clause in respect of "anything in the Constitution", it would be anomalous to say that the non-obstante clause in Article 371F only applies to a part of Article 332(3) which deals with proportionality and not to the whole provision, including the very principle of reservations. However, we are not inclined to finally decide on the specific contention of the petitioners, which requires a detailed analysis of the interface between Article 371F on the one side and Articles 332 on the other.
94. In any case, the ruling in **RC Poudyal** is unambiguous on the aspect that proportionality is not capable of being applied with mathematical precision. The principle of proportionality is to be borne in mind by the Delimitation Commission and the Election Commission while acting in discharge of their powers under the two legislations.

95. For instance, if the percentage of ST population is 3% of the total state population and the state has 70 Assembly Seats, 3% of 70 seats would be 2.1 or 2 seats (rounded off to the closest whole number). Now if three seats are allocated for the STs instead of two, this would be considered violative of the mandate of Article 332(3) since the reservation allowed to the STs is greater than their percentage of total population in the state. These were the facts of **Anand Singh Kunwar v. Election Commission of India** where though the Election Commission later rectified this error, a two-judge bench of this Court held that reserving 3 seats instead of 2 in the Uttarakhand Legislative Assembly would have been contrary to the paramount consideration of proportionality under Article 332(3).²¹ Notably, provisions analogous to Article 371F that permit a departure from Article 332(3) do not exist for the State of Uttarakhand.

96. Section 8 of the Delimitation Commission Act, as we have observed above, mandates that the exercise of the Delimitation Commission's powers in determining reserved seats be in accordance with the 2001 census. In this the Commission must have due regard to the provisions of Articles 81, 170, 330 and 332 of the Constitution.

97. The Delimitation Act or the RP Act do not require consideration of subsequent changes to the composition of the Scheduled Castes or Scheduled Tribes Orders in determining the reserved seats for Scheduled Tribes. This is precisely why the Ordinances promulgated after this Court's directions in **Virendra Pratap** (supra) created certain provisions expressly enabling readjustment of seats by factoring in

²¹ (2007) 7 SCC 234.

inclusions/exclusions to the Scheduled Tribe lists.²² Such an enabling direction was made in the specific factual context of that case in **Virendra Pratap (supra)**, as we have noted above.

98. However, legislative efforts in the form of the Ordinances and Bills, did not eventually result in the creation of a legislative framework creating a power to enable the Delimitation Commission and/or the Election Commission to incorporate changes *dehors* the 2001 census to the Delimitation Orders. The Delimitation Act and the Representation of the People Act, as they exist presently, do not create such a legislative framework. Absent a statutory duty, this Court is unable to issue a writ of mandamus against the respondents.

99. This court has held in respect of the relief of mandamus, that:

“11. The writ of Mandamus is only granted to compel performance of a public duty or to enforce private rights when duties of a public nature, affect public rights or when private rights are breached by or in collusion with public officers.

12. The legal duty that may be enjoined by Mandamus can be one imposed by the Constitution, a statute, any law or by rules or orders having the force of law, which are capable of being judicially enforced.

13. The writ of Mandamus is liable to be refused when there is no legal or constitutional obligation of the

²² Preamble to the Readjustment of Representation of Scheduled Castes and Scheduled Tribes in Parliamentary and Assembly Constituencies (Second) Ordinance 2013 –

“AN ORDINANCE to provide for the readjustment of seats in the House of the People and in the Legislative Assemblies of the States and for the readjustment of territorial . constituencies therefore, insofar as such readjustment is necessitated by inclusion in or exclusion from the lists of the Scheduled Castes and the Scheduled Tribes and for matters connected therewith or incidental thereto.”

authority concerned, which is capable of being enforced by Mandamus.²³

100. For the Court to direct that in addition to the reservation which has been made in Section 7(1A), Parliament must necessarily legislate in a particular manner to provide proportional representation to all the other communities forming a part of the Scheduled Tribes, would be to trench into the legislative domain. The Court unquestionably has the power to determine in the exercise of judicial review as to whether a provision made by Parliament is contrary to constitutional principle. But equally, this Court would be going beyond the line that separates the legislative from judicial domains by directing that reservation for the Scheduled Tribes over and above what has been prescribed in Section 7(1A) should be made by Parliament in a particular manner. This Court has held-

“Having due regard to the provisions of Articles 245 and 246 of the Constitution, no such mandamus can be issued by this Court. Nor can a direction be issued by this Court to the legislature of a State to enact a law.”²⁴

101. No mandamus can be issued to Parliament as a legislating body to enact a legislation or to legislate in a particular manner. These are matters which have to be factored in by Parliament, at its discretion. The judgment of the Constitution Bench in **RC Poudyal** clearly lays down the road map for the manner in which the Court must

²³ Vivek Krishna vs Union of India, 2022 SCC OnLine SC 1040.

²⁴ John Paily vs State of Kerala 2021 SCC OnLine SC 3405.

approach such a vexed issue.

102. Mr K M Nataraj, Additional Solicitor General has sought to rely on the provisions of Article 170 to contend that the Article would stand in the way of any fresh exercise of delimitation being carried out.

103. The provisions of Article 170 indicate that until the census takes place after 2026, the total number of seats in the Legislative Assembly would be governed by the readjustment made on the basis of the 1971 census and the division of territorial constituencies would be governed by the readjustment on the basis of the 2001 census. This has no bearing on the exercise which is required to be conducted on the issue which is raised in the present proceedings which essentially relates to the implementation of the principle of representation for the Scheduled Tribes on the basis of the population as indicated in the 2001 census.

104. The Additional Solicitor General sought to argue that the 2001 census may not give accurate figures since many of the communities that were subsequently designated as Scheduled Tribes were part of the general communities prior to the census. This is a matter for the Delimitation Commission to determine. How the figures of population for a particular Scheduled Tribes should be ascertained within the purview of the 2001 census is a matter for determination which the statutory body would be empowered to carry out at the appropriate stage.

Conclusion

105. The delimitation of Parliamentary and Assembly Constituencies Order 2008 forms the basis of the First and Second Schedules to the RP Act. The Delimitation Commission completed its exercise almost fifteen years ago. Mr K M Nataraj, Additional Solicitor General submitted that nearly fifty-one communities were added after 2001 to the list of Scheduled Tribes until the last census took place in 2011. This is a matter which must engage the attention of the Union Government. The manner in which this exercise would have to be determined within the purview of the Delimitation Act 2002. But as we have already noted earlier, the exercise would require legislative amendments, particularly having regard to the provisions of the First and Second Schedules to the RP Act. Directing a legislative amendment is beyond the domain of judicial review.

106. In regard to the State of West Bengal, it has been submitted, by the counsel appearing on behalf of the Election Commission that broadly an additional seat would have to be made available in the State of West Bengal for the Scheduled Tribes in order to accommodate the principle of proportional representation. The above submission makes it abundantly clear that it is for the Union Government to take recourse to the powers under the Delimitation Act 2002 for the purpose of ensuring that the provisions of Articles 330 and 332 are duly implemented. The Central Government should take a decision with all reasonable dispatch, in accordance with law.

107. We, however, clarify that this judgment shall not be construed as interfering with the election schedule that the Election Commission may prescribe for the conduct of elections either to Parliament or to the State Legislative Assemblies.

108. The Writ Petitions are disposed of in view of the above discussion.

109. Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
November 23, 2023