



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 558 of 2011

Order Reserved on 23.04.2024

Order Delivered on 26.06 .2024

1. Suresh Kumar Dagla, S/o Late Shankar Lai Dagla, aged about 39 years, R/o Raigarh Road, Lailunga, Tahsil & Post - Lailunga, District - Raigarh (C.G.).
2. Shri Alok Kumar Dagla, S/o Late Shankar Lal Dagla, aged about 31 years, R/o Raigarh Road, Lailunga, Tahsil & Post - Lailunga, District - Raigarh (C.G.).
3. Smt. Pushpa Dagla alias Smt. Dhanni D Wd/o Late Shankar Lal Dagla, Aged about 55 years, R/o Bajaj Colony, Sector - 2, New Rajendra Nagar, Post - Ravi Gram, Tahsil & District - Raipur (C.G.)

---- PETITIONERS

Versus

1. State of Chhattisgarh, Through the Secretary, General Administration Department, Mantralaya, D. K. S. Bhawan, Raipur (C.G.)
2. High Power Caste Scrutiny Committee, Through Member Secretary and Director, Adim Jati Anusandhan Avam Prashikshan Sansthan, Pt. Deendayal Uppadhyaya Nagar, Sector - 4, Raipur (C.G.)
3. Indian Oil Corporation, Through its Chief Divisional Manager, V.I.P. Road, Post - Ravi Gram, Raipur (C.G.)
4. Collector, Raigarh, District - Raigarh (C.G.)
5. Collector, Bilaspur, District - Bilaspur (C.G.)

---- RESPONDENTS

For the Petitioners

: Mr. K.A. Ansari, Sr. Advocate with Mrs. Meera Ansari and Aman Ansari, Advocates.

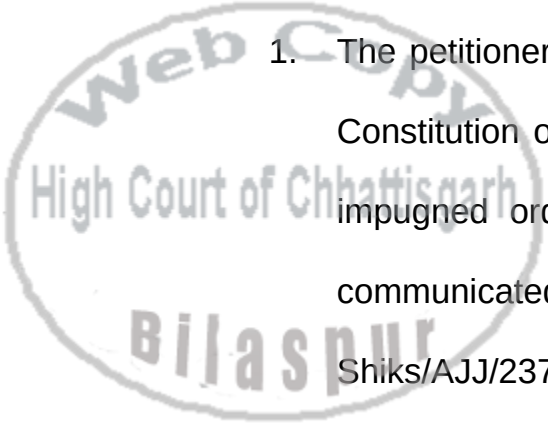


For the State : Mr. Gary Mukhopadhyay, GA
For the respondent No. 2 : Mr. S.S. Baghel, Advocate appears on behalf of Mr. Gagan Tiwari, Advocate
For the respondent No.3 : Mr. N.N. Roy, Advocate
For the Intervenor : Mrs. Fouzia Mirza, Sr. Advocate with Mr. Navin Shukla, Mr. A.K. Prasad, Mr. Ratnesh Kumar Agrawal, Mr. Sourabh Agrawal and Mrs. Prabha Sharma, Advocates

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

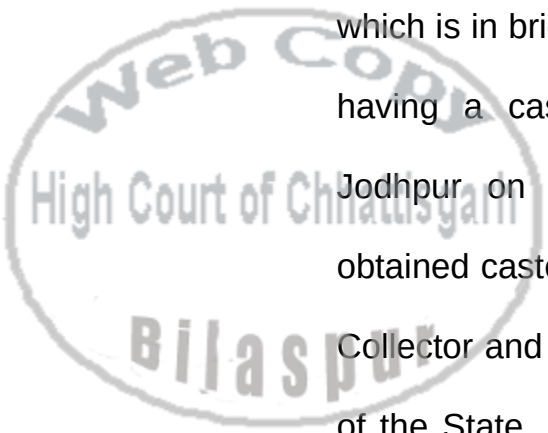
1. The petitioners have filed the present petition under Article 226 of the Constitution of India seeking appropriate direction for quashing of the impugned order dated 10.01.2011 in Case No. 237/AJJ/2008 vide communicated memo dated 11.01.2011 bearing Memo No. Chhas Shiks/AJJ/237/08/2657 by which High Level Caste Scrutiny Committee, Raipur has cancelled the caste certificate issued by Sub Divisional Officer to the petitioners.
2. A complaint dated 10.10.2007 was made before the Collector Bilaspur by Vikash Kumar Gond, Hridaya Rathiya and Ajay Kumar Agrawal who are intervenors of the case alleging that Shankar Lal Dagla, who is resident of Village Nanda, Tahsil and District Jodhpur, Rajasthan claiming himself to be a member of Bheel Tribal Community and on the basis of forged caste certificate he has been appointed as Lecturer and thereafter promoted as Dy. Collector. It has also been alleged that by using his power he has obtained petrol pump in the name of his son





Petitioner No.1. It has also been alleged that the caste certificate has been issued without following the due process of law and thus prayed for declaration of caste certificate issue in favour of the petitioner to be null and void. On the basis of complaint, proceedings were initiated by the High Power Committee/ Respondent No.2. It has been further contended that the Committee vide order dated 10.01.2011 has cancelled the caste certificate.

3. The petitioners have assailed the impugned order by placing the facts which is in brief that the Shankar Lal Dagla, father of petitioner No.1 is having a caste certificate dated 04.02.1963 issued by Tahsildar, Jodhpur on the basis of caste certificate dated 04.02.1963 has obtained caste certificate dated 10.11.1994 of Bheel Tribe from Deputy Collector and Executive Magistrate Bilaspur. Thereafter, reorganization of the State, Petitioner No.1 and Petitioner No. 2 have also obtained temporary caste certificate of "Bheel Caste bearing case number No. 863/A A121/04-05 on 28.06.2005 from Naib Tehsildar Lalunga, District Raigarh and on the basis of caste certificate, dealership of Indian Oil petrol pump was allotted to Petitioner No. 1 which is reserved for Scheduled Tribes of the State of Madhya Pradesh.
4. It has also been contended that in pursuance of complaint proceedings were initiated for verification of the caste of the petitioners and accordingly the Vigilance Inspector visited Rajasthan at parental village of the petitioner No.1 and obtained certified copy of the Family Tree





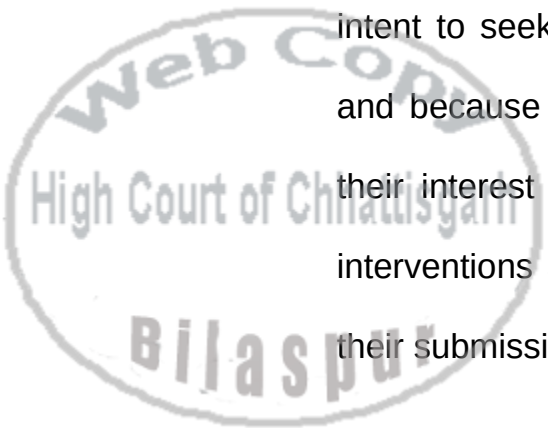
which clearly reflected that petitioners belonged to Bheel Tribe and submitted its report on 25.11.2010. It has also been contended that the report submitted by the Vigilance Inspector is contrary to the evidence of statement of Tulsi Ram Dagla and Kana Ram and have wrongly recorded that petitioners by caste is Nayak. It has also been contended that on the basis of wrong report of Vigilance Inspector the impugned order dated 10.01.2011 cancelling the caste certificate has been passed. It has been further contended that as per the gazette notification dated 29.11.1979 Bheel and Nayak castes in the State of Rajasthan to Scheduled Tribe. It has also been submitted that the petitioners have purchased some property which was objected by other persons on the count that they do not belong to tribal as there is bar of purchase of property of tribal as per provisions of Section 170 B of the Land Revenue Code. The petitioners have contested the case and Board of Revenue vide order dated 19.04.2010 has decided the case in their favour which clearly suggested that the petitioners are tribal.

5. It has also been contended by the petitioners that petitioners No. 1 has been allotted retail outlet of Indian Oil Corporation by respondent No. 3 at Lailunga on 24.11.1995 which was directed to be closed down by the Collector in view of the order of Respondent No. 1 dated 10.01.2011, this has necessitate the petitioner to file the present writ petition with a prayer for quashing of the order dated 10.01.2011 passed by respondent No.2 also prayed for declaring that the petitioners are belonging to S.T. Community both as Nayak as well as Bheel.



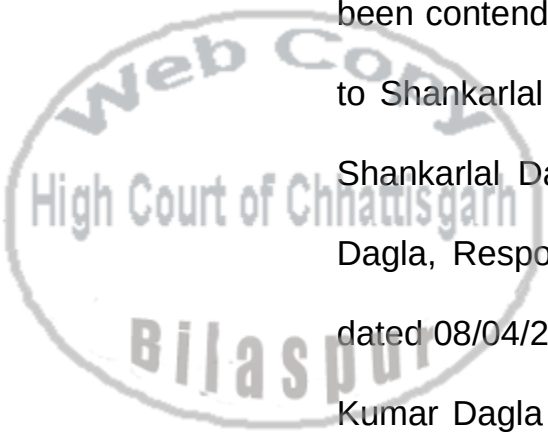


6. This Court while hearing the petition has granted interim protection to the petitioner on 30.01.2011 which is continuing till today and in view of the interim order the petitioner No. 1 is running the Petrol Pump since then.
7. The complainant Vikas Gond as well as pandit Ram Rathiya and Anoop Singh Manjhi, Malik Ram Manjhi and Ali Ahmad have moved an application for interventions. Considering the factual matrix and looking to the interest of the interveners, as some of the intervenors intent to seek an opportunity to obtain the dealership of petrol pump and because of allotment of petrol pump in favour of petitioner No.1 their interest is adversely affected, therefore, all the applications for interventions are allowed. They have been given opportunity to make their submission.
8. The respondent No. 1, 2, 4 and 5 have filed their return mainly contending that a complaint was made by one Vikas Kumar Gond before the Collector, Bilaspur stating that Shankar Lal Dagla working as Deputy Collector, Dantewada, his son Suresh Kumar Dagla have submitted forged caste certificate for getting Govt. service. It has also been contended that Shankar Lal Dagla has mutated the lands in the name of his sons and daughters and obtained dealership of Petrol Pump on the basis of forged caste certificate for which they are not at all entitled. Thereafter, the Respondent No. 2 has registered a case and started investigation into the matter. The respondent no. 2, after





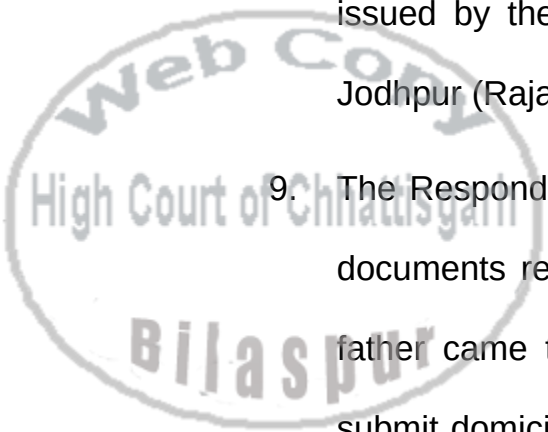
perusing the complaint, has directed the Vigilance Cell of the Committee to investigate into the matter regarding forged caste certificate issued in favour of the petitioners and the Vigilance Cell after investigation has submitted its report. The report of Vigilance Cell clearly revealed that originally Shankarlal Dagla and Suresh Kumar Dagla are the residents of Jodhpur, Rajasthan and also they have not submitted the Nirjatiya Prapatra (Ethnological Form), hence, their social status is required to be enquired from Jodhpur, Rajasthan. It has been contended that Respondent No. 2 has issued show cause notice to Shankarlal Dagla alongwith the report of Vigilance Inspectors. Shri Shankarlal Dagla died on 31/10/2008 and after death of Shankarlal Dagla, Respondent No. 2 directed the Vigilance Inspector vide letter dated 08/04/2009 to go ahead with the investigation against the Suresh Kumar Dagla (Petitioner herein) and further directed to submit report. Pursuant to which the Vigilance Inspectors have submitted the report stating that the ancestors of Shankarlal Dagla and Suresh Kumar Dagla never belonged to State of Chhattisgarh and they originally belong to State of Rajasthan, they belong to Khardarndheer and not the residents of village Nandrahkurd of Jodhpur. Their ancestral property is also situated there and as per the revenue records they belong to "Nayak" caste. In this regard a show cause notice was issued to the petitioners on 09/04/2010. Several opportunities were given to the petitioner by the Respondent No. 2 for proving his caste and social status and on 14/06/2010 and 12/07/2010 the petitioner did not appear





before the Committee, hence, the case was fixed for 09/08/2010 and on that date the petitioner appeared before the Respondent No. 2 Committee and sought 8 months' time, but he failed to submit the Nirjatiya Prapatra. On 06/09/2010 the case was fixed for hearing but the petitioner did not appear before the Committee. Hence, on 10/09/2010 notice was sent through registered post fixing the date of hearing on 20/09/2010. The petitioner appeared before the Committee on 20/09/2010 and submitted revenue records of the year 2006-2007 issued by the Section In-charge, Land Records of District Collector, Jodhpur (Rajasthan).

9. The Respondent No. 2, Committee has asked the petitioner to submit documents relating to State of Chhattisgarh, but he has said that his father came to Chhattisgarh in the year 1970, hence, he could not submit domicile certificate of State of Chhattisgarh. It is submitted that the petitioner appeared before the Committee on 20/09/2010 and submitted the revenue records of Jodhpur on which his ancestor Nena S/o. Keerta, Caste "Bheel" was mentioned. The Committee has sent its Vigilance Inspectors to get verified the revenue records so submitted by the petitioner from Jodhpur. He would further submit that the Vigilance Cell has submitted its report before the Committee and upon the Investigation report and attached documents; it is quite vivid that the petitioner submitted forged documents showing his caste as "Bheel", whereas in the original documents it is written as "Nayak". Hence, it is revealed that the petitioner submitted forged documents



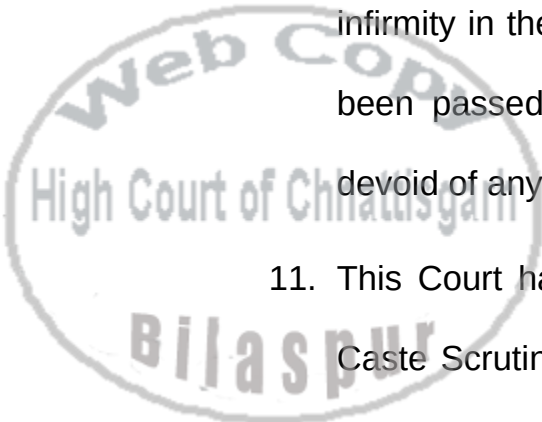


with mala-fide intention. Show cause notice was issued to submit his reply on 13/12/2010, but the petitioner failed to appear on 13/12/2010.

10. Learned State counsel would further submit that the committee has passed the order against Suresh Kumar Dagla after following the guidelines laid down by Hon'ble Supreme Court in case of "Ku. Madhuri Patil Vs. State of Maharashtra and in the matter of Laveti Giri and also considering the circular dated 22/03/1977 issued by the Ministry of Home Affairs, Govt. of India. Hence, there is no illegality or infirmity in the action of the Respondents and the order impugned has been passed strictly in accordance with law. The instant petition is devoid of any merit; hence, the same deserves to be dismissed.

11. This Court has called the records of the proceedings of High Power Caste Scrutiny Committee which has been submitted by the State on 23.04.2024.

12. The petitioners have filed an application for taking additional facts and documents on record and submitted the death certificate of brother of his grandfather, copy of notification dated 10.10.1994 issued by respondent No.3 and documents relate to grant of dealership. The petitioner have also annexed notification of presidential order regarding list of Tribals of the State of Chhattisgarh and would submit that the Bheel Community is scheduled tribe in the State of Chhattisgarh and thus prayed for allowing the writ petition.





13. Learned Sr. Counsel for the petitioner reiterating the same stand which he has taken in the writ petition would submit that from the documents placed on record as well as rejoinder submitted before this Court would clearly demonstrate that the ancestors of the petitioners are Scheduled Tribe. It has also been submitted that the if the member of Scheduled Tribe and Scheduled Castes who have migrated to another State are not entitled to the benefits of any concession in the migrated State nor will be entitled for any concession or reservation in education/employment in the migrate State but they will not lose their status as member of the Scheduled Tribe of the Caste. Thus, the member of Scheduled Caste or Scheduled Tribes who belongs to such community in any of the State in Union of India are eligible for appointment so far as all India organization are concerned, as such the Committee has no jurisdiction to direct respondent No. 3 to cancel the dealership because of the cancellation of caste certificate. To substantiate this submission, he would refer to the judgment of Hon'ble Supreme Court in the case of **Bir Singh Versus Delhi Jal Board and others reported 2018 (10) SCC 312** and would refer paragraph 103 of the judgment:-

103- The executive instructions/circulars issued by the Government of India also reiterate to well-settled position. The circular No. BC-16014/1/82-SC & BCD-I dated 06.08.1984 of the Ministry of Home Affairs addressed to all State Governments and UT Administration states that SC and ST on migration from the State of his origin to another



State will not lose his status as SC/ST; but will be entitled to the concession/benefits admissible to the SC/ST from the State of his origin and not from the State where he has migrated. The relevant portion of the said circular reads as under:-

No. BC-16014/1/82-SC & BCD-I Government of India/Bharat Sarkar Ministry of Home Affairs/GrihMantralaya New Delhi, the 6th August, 1984 To, The Chief Secretaries of All State Governments and U.T. Administrations.

Subject: - Verification of claim of candidates belonging to Scheduled Castes and Scheduled Tribes and migrants from other States/Union Territories-Form of certificate-Amendment to.

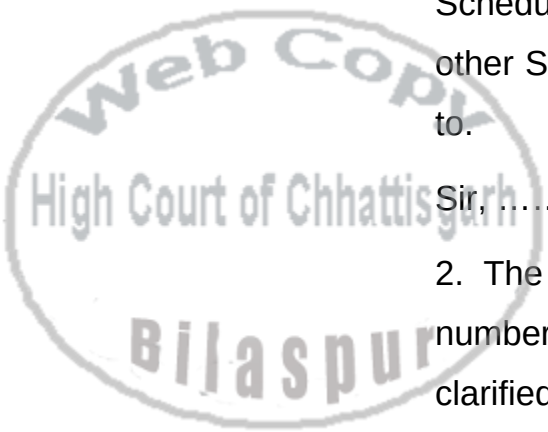
Sir,

2. The instructions issued in this Ministry's letter of even number dated the 18.11.1982 will continue. It is, however, clarified that the Scheduled Caste/Scheduled Tribe person on migration from the State of his origin to another State will not lose his status as Scheduled Caste/Scheduled Tribes but he will be entitled to the concessions/benefits admissible to the Scheduled Castes/Scheduled Tribes from the State of his origin and not from the State where he has migrated.....
(Underlining added) Yours faithfully Sd/-.

Joint Secretary to Govt. of India.

Thus he would pray for allowing the petition by quashing the impugned order dated 10.01.2011 Annexure P/1 passed by respondent No.2.

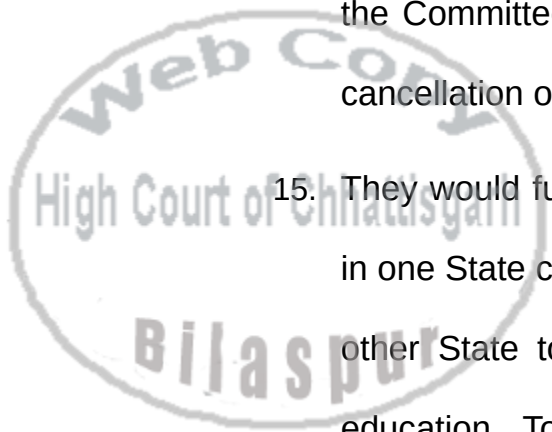
14. Counsel for the intervenors would submit that the impugned order passed by the committee is legal, justified and does not suffer from perversity or illegality which warrant interference by this Court. They





would further submit that the petitioner No.1 has obtained dealership from respondent No. 3 under the reserve category Scheduled Tribe which he has no right as he belongs to Nayak which is not tribal caste. It has also been contended that in the State of Chhattisgarh no presidential notification in the list of Scheduled Tribe in respect of "Nayak or Bheel" have been issued. The Petitioner No. 1 has wrongly taken advantage of Caste for allotment of the dealership of the Petrol Pump under the Territorial jurisdiction of State of Chhattisgarh, as such the Committee has rightly passed the impugned order recommending cancellation of dealership of petrol pump of the petitioner No.1.

15. They would further submit that a person belonging to Scheduled Tribe in one State cannot be deemed to be Scheduled Tribe in relation to any other State to which he migrate for the purpose of employment or education. To substantiate these submissions they would refer to judgments of this Court in "**Rajkumar Daryani Vs. State of Chhattisgarh & others**" reported in 2023 SCC Online Chhattisgarh 4169. They would further refer to the judgments of Hon'ble Supreme Court in the cases of **Marri Chandra Shekhar Rao v. Dean Seth G. S. Medical College** reported in (1990) 3 SCC 130, **Chandigarh Housing Board v. Tarsem Lal** 2024 SCC online SC 154 and **Rajkumar Daryani vs. State of Chhattisgarh** 2023 SCC online Chh 4169 and would pray for dismissal of the writ petition.





16. On the other hand, learned State counsel would submit in the present case on the proper analysis of the evidence available on record, rightful view has been taken by the Caste Scrutiny Committee and accordingly no interference should be made by this Court. He would further submit that the petitioner belongs to Rajasthan, therefore, he cannot take advantage of reservation in the State of Chhattisgarh as his migration from the State of Rajasthan is not compulsory migration but it is voluntarily migration for employment and would pray for dismissal of the writ petition.

17. I have heard learned counsel for the parties and perused the records.

18. From the above stated factual matrix the points to be determined by this Court are:-

(i) Whether a person belongs to Scheduled Tribe in relation to a particular State can get benefits or concessions or reservation admissible to them in the original State from where they have been migrated?

(ii) Whether this Court can declare that the petitioners are belongs to Scheduled Tribe Community being Nayak or Bheel Castes in the State of Chhattisgarh?

19. To determine the point raised in this petition it is expedient for this Court to extract Article 341 and 342 of the Constitution of India which is as under:-

"341. Scheduled Castes.--(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 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.

(2) 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 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.

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 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."

20. From bare perusal of the said provisions of Constitution of India, it is quite vivid that the public notification of 'tribes or tribal communities' by the President of India, upon consultation with the Governor, is a sine qua non for deeming such tribes or tribal communities to be 'Scheduled Tribes' in relation to that State or Union Territory for the purposes of the Constitution. The issue with regard to the benefits of reservation to a person who has migrated to one State to another State has recently come up for consideration before the Hon'ble Supreme Court in case of **Chandigarh Housing Board v. Tarsem Lal 2024 SCC online SC 154** wherein the Hon'ble Supreme Court has examined all the



judgments including the judgment of Bir Singh relied upon by the petitioners and held as under:-

16.....

In this context, it is apposite to refer to what the Constitution Bench of this Court, speaking through Chief Justice Gajendragadkar, in *Bhaiya Lal v. Harikishan Singh*, AIR 1965 SC 1557, held as it expounded on the object of issuance of public notification under Article 341 of the Constitution.

"10.....The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. 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 are 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. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question.

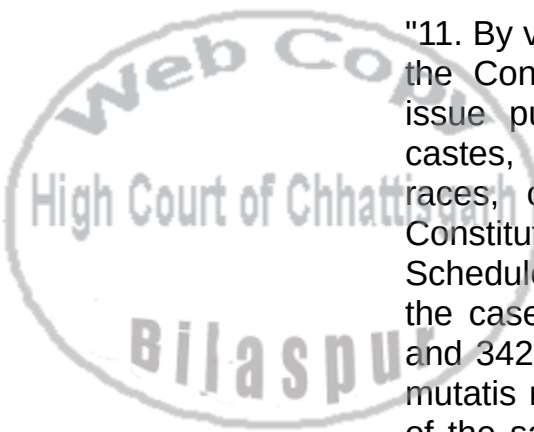




17. The absolute necessity of a public notification in terms of Articles 341 and 342 was explicated by a Constitution Bench of this Court in **State of Maharashtra v. Milind, (2001) 1 SCC 4 ('Milind')** which held that de hors a specific mention in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950 (as amended by Parliament), it was impermissible to hold an inquiry and declare that any tribe or tribal community to be included in the list of Scheduled Tribes. While holding that Article 341(2) did permit anyone to seek such modification and that it is not open to any judicial body to modify or vary the Constitution (Scheduled Tribes) Order, 1950, this Court expounded on the salutary purpose of deferring to the Presidential order, as amended by Parliament while considering the grant of any benefit to members of the Scheduled Tribe community:

"11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament.

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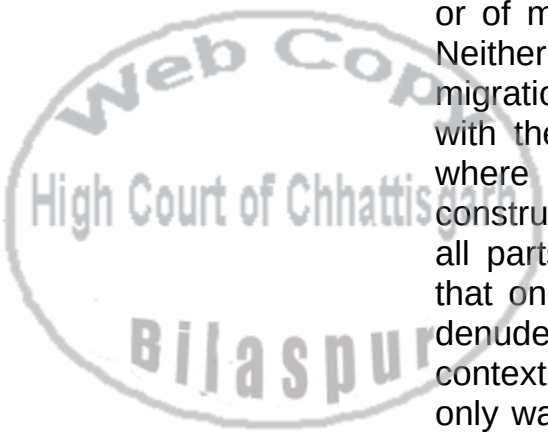
35. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some betterplaced persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution." (underlining by us)

18. Learned counsel for the appellant has drawn our attention to the judgment of this Court in **Marri Chandra Shekhar Rao** by placing reliance on the following paragraphs:-

"13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkataramana Devaru v. State of Mysore [1958 SCR 895, 918 : AIR 1958 SC 255], where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if



possible, effect could be given to both. It however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all - to Scheduled Castes or Tribes and to non scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying of his trade or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may

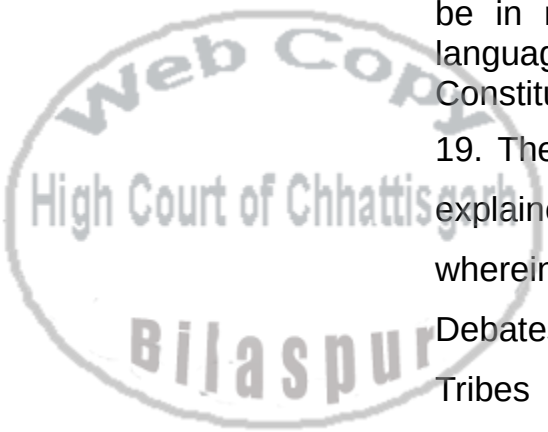




not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

19. The rationale for the aforesaid interpretation was further explained by another Constitution Bench in Action Committee wherein this Court relied upon the Constituent Assembly Debates to hold that the list of Scheduled Castes, Scheduled Tribes and backward classes in a given State would correspond to the disadvantages and social hardships existing in the specific social context for a particular caste, tribe or class in that State. Given the variance of social context, the list of such castes, tribes or classes would be totally non est in another State to which persons belonging thereto may migrate. Thus, the learned judges wholly agreed with the reasoning and conclusion in Marri Chandra Shekhar Rao and observed as under:

"16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a





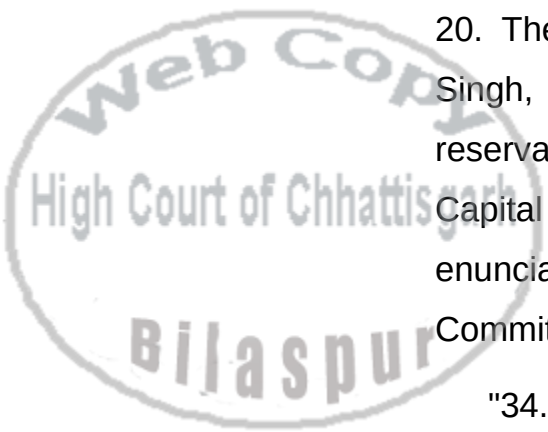
caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

20. Thereafter, the Constitution Bench of this Court in *Bir Singh*, being seized of the dispute pertaining to SC/ST reservation for persons who had migrated to the National Capital Territory of Delhi, reiterated the well-settled principles enunciated in *Marri Chandra Shekhar Rao and Action Committee* in the following words:

"34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled 32 Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'.

x x x x x x x

36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes





and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India."

26. The upshot of the above discussion is that:

i. The Presidential notification of a tribe or tribal community as a Scheduled Tribe by the President of India under Article 342 is a sine qua non for extending any benefits to the said community in any State or U.T.

ii. This implies that a person belonging to a group that is recognized as a Scheduled Tribe in a State would be recognized a Scheduled Tribe only within the said State and not in a U.T. where he migrates if no such Presidential notification exists in the said U.T.

21. The reliance upon the judgment of Bir Singh (supra) by the petitioners is misplaced in view of the judgment passed by the Hon'ble Supreme Court in the case Tarsem Lal (supra) as the Hon'ble Supreme Court of in paragraph 21 and 22 has examined the issue and has held as under:-

21. Learned counsel for the respondent placed reliance on the Constitution Bench judgment of this Court in Bir Singh concerning the services in the NCT of Delhi. In the said judgment in paragraph 68, it has been categorically recorded as under:-

"68. The Affidavit of the Union does not touch upon the details of Subordinate Services in other Union Territories. Neither the authorities of the other Union





Territories have laid before the Court any relevant material in this regard. We, therefore, refrain from addressing the issue in question as far as other Union Territories are concerned and have confined our discussions and the consequential views only to the National Capital Territory of Delhi."

22. In view of the aforesaid observations, we do not think that the respondent can draw any parity from what the position is, insofar as NCT of Delhi is concerned with regard to availing of benefits by Scheduled Tribes, even though, there is no Presidential Order with regard to Scheduled Tribes issued insofar as NCT of Delhi is concerned. Further, the observations made above are in the context of services. In the circumstances, we find that the respondent cannot rely upon the judgment of this Court in Bir Singh.

22. Thus from above factual and legal position it is quite vivid that petitioners being migrated from Rajasthan cannot claim benefits of reservation in the State of Chhattisgarh and since he was granted dealership which was reserved for the tribal of the State of Chhattisgarh wrongly as such the Committee has not committed any illegality in cancelling the caste certificate as well as dealership of petitioner No.1. Accordingly, point No.1 is answered against the petitioners.

Point No. 2.

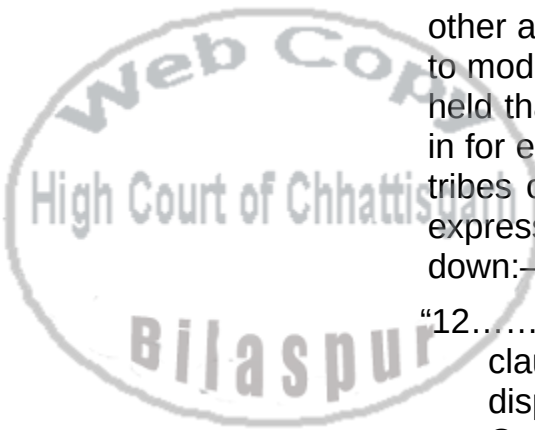
23. The petitioners have also prayed for declaration that the petitioners belong to Scheduled Tribe Community both as Nayak or Bheel. This declaration cannot be considered in view of the restriction imposed by Article 341 and 342 of the Constitution of India as the declaration of list



of Scheduled Caste and Scheduled Tribes and backwards classes fall within the domain of the President of India and within the domain of parliament which cannot be done by this Court under Article 226 of the Constitution of India in view of law laid by the Hon'ble Supreme Court in the case of **State of Maharashtra and another v. Kesho Vishwanath Sonone and another 2021(13) SCC 335** and has held as under:-

62. 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 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

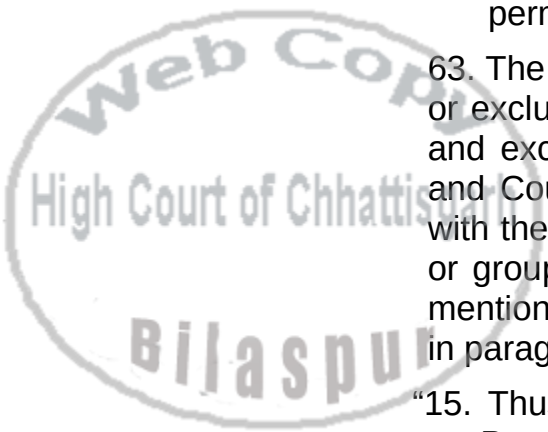




Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of the said articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or courts or Tribunals are vested with any power to 7 WPIL No. 2129 of 2017 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 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.”

63. 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 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 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 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 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

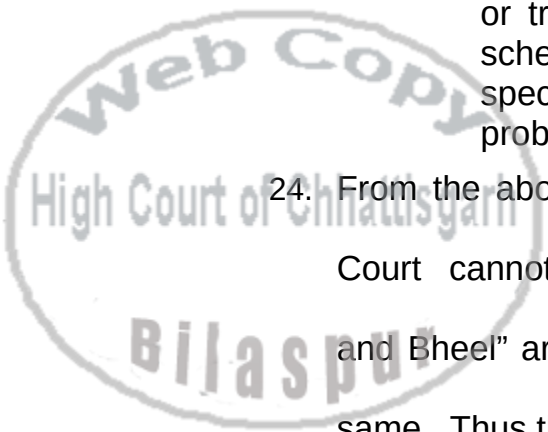




Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States 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.....

24. From the above stated legal position of law, it is quite vivid that this Court cannot issue a writ of mandamus directing that castes "Nayak and Bheel" are Scheduled Tribe and both the castes are one and the same.. Thus the point No. 2 is answered against the petitioner.

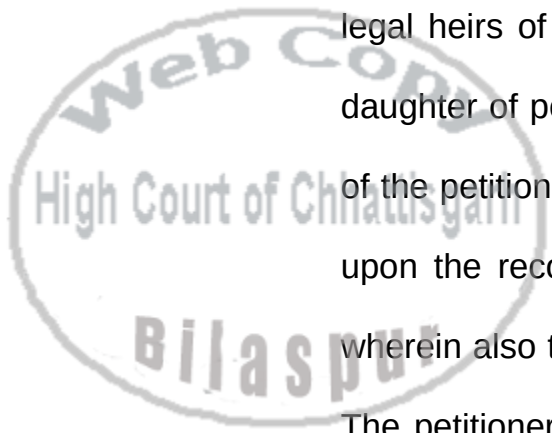
25. From the aforesaid, it is lucid that a person, who migrates from one State to the other does not carry his caste status to the migrating State, even if the same caste is recognized as Scheduled Tribe Community in both States. The reason is not far to see. There may be caste or sub caste of same name, which are recognized in more than one States in India. However, merely because the caste known by a particular name is recognized in more than one States cannot extend the benefit of reservation in both the States. The recognition of a caste in a particular State as Scheduled Tribe Community or OBC is directly relatable to





social, economic and educational backwardness faced by that caste in the home State. This geographical, social and educational backwardness existing in the home State cannot necessarily be the same in the other State.

26. From the record, it is not in dispute that the petitioners have been migrated from Rajasthan and the Committee after going through the records has recorded its finding in paragraph 17 of the impugned order that as per the mutation No. 258 recorded by the Panchayat in the legal heirs of Shankar Lal Dagla name of petitioner No. 2 and 3 and daughter of petitioner No. 1 names have been recorded wherein caste of the petitioners has been mentioned as Nayak. This Court has called upon the records of the Committee, particularly the revenue records wherein also the caste of the petitioner has been mentioned as Nayak. The petitioners have not produced any records before the Committee to demonstrate that he belongs to Bheel Caste which is Scheduled Tribe as burden of proving this fact lies upon the person who is claiming benefit of reservation. The record of the case would further demonstrate that the Vigilance Inspector has also visited the village of the petitioner and has given its report which also demonstrates that petitioners belong to Nayak Community. The Caste Scrutiny Committee after appreciating the material placed before it has recorded its finding that if any person who has claimed the benefits of reservation wrongly or illegally the same have to be recovered or denied in subsequent stage, therefore, they have issued direction for cancellation of the





dealership granted to the petitioner, as such the writ petition challenging the order of the High Power Caste Scrutiny Committee/ Respondent No.2 deserves to be dismissed by upholding the order of respondent No.2 and accordingly, it is dismissed.

27. Pending interlocutory applications, if any stand disposed of.

Sd/-

(Narendra Kumar Vyas)

JUDGE





(Head Note)

Schedule Tribe person migrated from one State to another State cannot claim benefit of reservation in migrated State, if it is not compulsory migration.

एक राज्य से दूसरे राज्य में प्रवास करने वाला अनुसूचित जनजाति का व्यक्ति, प्रवासित राज्य में आरक्षण का लाभ नहीं ले सकता, यदि यह अनिवार्य प्रवास नहीं है।

