A ACTION COMMITTEE ON ISSUE OF CASTE CERTIFICATE TO SCHEDULED CASTES AND SCHEDULED TRIBES IN THE STATE OF MAHARASHTRA

v.

UNION OF INDIA AND ANR.

B

JULY 18, 1994

[A.M. AHMADI, P.B.SAWANT, M.M. PUNCHHI, YOGESHWAR DAYAL AND N.P. SINGH, JJ.]

C *Constitution of India—Articles 14, 15, 16, 19, 21, 341 and 342—Constitution (Scheduled Castes) Order, 1950—Constitution (Scheduled Tribes) Order, 1950—Scheduled Castes and Scheduled Tribes specified in relation to a State or Union Territory—Such persons migrating from State of origin to another State where it is specified to be a Scheduled Caste or a Scheduled*
D *Tribes in relation to that State—Denial of benefits and privileges available to Scheduled Caste and Scheduled Tribe specified in relation to that State to such migrated persons—Whether violative of Arts. 14, 15(1), 16(2), 19, 341 and 342 of Constitution—Held, no.*

Words and phrases—"In relation to that State" and "for the purposes of
E *this Constitution"—Meaning of.*

The State of Maharashtra had denied the benefit and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes
F **belonging to other States who had migrated from other States to the State of Maharashtra. These benefits and privileges were denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits**
G **and privileges accorded by the State of Maharashtra on August 10, 1950 in the case of Scheduled Caste and September 6, 1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 made in exercise of powers conferred**
H **by Article 341(1) and Article 342(1) respectively of the Constitution of**

India.

On March 22, 1977 the Government of India issued a communication addressed to Chief Secretaries of all the State Governments and Union Territories, imposing inter-state area restrictions for the purpose of availing the Scheduled Caste/Scheduled Tribe benefits and privileges. It was stated that these restrictions had been deliberately imposed so that the people belonging to the specific community residing in a specific area which had been assessed to quality for the Scheduled Caste or Scheduled Tribes status only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different States/Union Territories may not both be treated to belonging to Scheduled Caste/Tribe or *vice-versa* the residence of a particular person in a particular locality assumed a special significance. The residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality cannot be the permanent residence, thus a person who was temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in his case for example, to earn a living or seek education, etc. could also be regarded as Scheduled Caste or a Scheduled Tribe if his Caste/Tribe has been specified in that order in relation to his State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence even if his Caste/Tribe has been scheduled in respect of that area in any Presidential Order.

The Communication further stated that with a view to ensure the veracity of permanent residence of a person and that of the Caste/Tribe to which he claims to belong, the Government of India made special provisions in the proforma prescribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates, it was emphasised that the Revenue Authority of one District would not be competent to issue such a Certificate in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order has been in a different State/Union Territory. In regard to persons born after the date of the notification of the relevant Presidential Order, the communication stated that the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe Certificate was the place of permanent abode of their parents at the time of the notification under which they claim to belong to such a

A caste/tribe. Subsequently, in modification of the earlier orders, the prescribed authority of State/Union Territory was permitted to issue the Scheduled Caste/Scheduled Tribe certificate to a person who had migrated from another State on production of a genuine certificate issued to his father by prescribed authority of the State of the father's origin, except B where the prescribed authority considered a detailed enquiry necessary through the State of origin before issue of certificate. It was further stated that the certificate will be issued irrespective of whether the Caste/Tribe in question is Scheduled or not in relation to the State/Union Territory to which the person has migrated. It was clarified that a Scheduled Caste/Tribe person who had migrated from the State of origin to some C other State for the purpose of education, employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin only and will be entitled to derive benefit from that State and not from the State to which he had migrated.

D Writ petition under Article 32 of the Constitution was filed in a representative capacity and by way of the Public Interest Litigation challenging the communications/ circulars issued by the Government of India. The petitioners contend that the denial of the benefits and the privileges by the State of Maharashtra were violative of the fundamental rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, E besides being contrary to the letter and spirit of Articles 341 and 342 of the Constitution. It was further alleged that the cut off date was arbitrarily fixed and persons belonging to the Scheduled Caste/Scheduled Tribe continued to experience difficulties in securing certificates from the State of origin as well as the State to which they had migrated on account of the F instructions issued by the Government of India as contained in the communication dated March 22, 1977 and subsequent communications.

The State contended that the question raised in this petition had been conclusively answered by a constitution Bench of this Court in *Marrie Chandra Shekhar Rao* v. *Dean Seth G.S. Medical College*, [1990] 3 SCC 130. G The expression "in relation to that State" read with words "for the purpose of this Constitution" in Articles 341 and 342 left no manner of doubt that the specification made was in relation to that State for which it was made i.e. the State of origin and not the state to which a person migrated. That is because the concept of backwardness in Articles 15 and 16 is a relative H one, varying from area to area and region to region and hence it is not

permissible to generalise any Caste or any Tribe as a Scheduled Caste or as Scheduled Tribe for the whole of the country. Therefore, a person belonging to a Scheduled Caste or a Scheduled Tribe in relation to a State would require necessary protection and benefits in that State to being about equality, but the social environment of the State to which he migrates may not be the same as in the State of his origin and, therefore, he cannot claim the benefits and privileges available to a Schedule Caste and Scheduled Tribe in the State to which he migrates.

The petition raised the following question for determination :

Where a person belonging to a Caste or Tribe specified for the purpose of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A, migrates to State B, where a Caste or Tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Caste and or Scheduled Tribe in State B.

Dismissing the petition, this Court

HELD : 1.1. The language of Clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation to each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two article the President is, in the case of State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made in relation to that State can be treated as specification in relation to any other State whose Governor the President has not consulted. It may be true that this specification was not only in relation to a given State whose Governor has been consulted but is 'for the purpose of this Constitution' meaning thereby that the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes, but the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to and to the extent they are entitled to, in order to become equals with others and those who migrate to other areas should ensure that they make way for the disad-

A **vantaged and disabled of that part of the community who suffer disabilities in those areas. [735-A-G]**

1.2 The consideration for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State depend on the nature and extent of
B **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**
C **different. So also the degree of disadvantages of the 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 necessary mean that if there be another caste bearing the same nomenclature in another State the person belonging to**
D **the former would be entitled to the rights, privileges and benefits admissible to a member of the Schedule Caste of the latter State for the purposes of the Constitution. This aspect had to be kept in mind and which was very much in the minds of the Constitution makers as is evident form the choice of language of Articles 341 and 342 of the Constitution. Therefore, the view expressed in the communication dated February 22, 1985 be upheld and**
E **the challenge of the petitioner that the said view was *ultra vires* Article 14, 15, 16 or 21 of the Constitution be negatived. [736-B-E]**

Marrie Chandra Skehhar Rao v. *Dean Seth G.S. Medical College & Others*, (1990) Supp. 1 SCALE 7 = [1990] 3 SCC 130, relied on, where
F **decisions of Gujarat and Karnataka High Courts on one hand and Orissa, Bombay and Punjab & Haryana High Courts on the other were considered and latter view was upheld. The view taken by the Constitution Bench did not require reconsideration or reference to a larger Bench. [738-A]**

G CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 898 of 1990.

(Under Article 32 of the Constitution of India.)

Raju Ramacharndran and Joseph Pookkatta for the Petitioners in
H W.P. & Res. No. 1.

G.B. Sathe and A.S. Bhasme for the petitioner in SLPs. & Res. No. 2 in W.P. A

K. Lahiri, Mrs. Anil Katiyar and Ms. Binu Tamta for the Union of India.

D.N. Mishra for M/s. JBD & Co. for the Res. No. 9 in SLPs. B

S.C. Birla for the Res. No. 5 in SLPs.

S.V. Deshpande for the Res. No. 4 in SLPs.

The Judgments of the Court was delivered by C

AHMADI, J. Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to D that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B, is the neat question raised in this petition brought under Article 32 of the Constitution by one Shri Devidas Kuberdas Kantharia in his personal capacity as well as in his capacity as the Chairman of E Petitioner No. 1 Committee. The grievance sought to be projected in this petition, which has been brought in a representative capacity and by way of a Public Interest Litigation, is that State B denies the benefits and privileges admissible to such persons belonging to Scheduled Castes and Scheduled Tribes who have migrated from State A or any other State. Before we set out the specific nature of the grievance it may be ad- F vantageous to refer to the provisions in the Constitution which have a bearing on the question at issue.

In part XVI of the Constitution special provisions relating to certain classes including Scheduled Castes and Scheduled Tribes have been made. G Article 330 and 332 provide for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States. Article 335 enjoins that claims of Scheduled Castes and Scheduled Tribes shall be taken into consideration in making all appointments to services and posts in connection with the affairs of the Union or of a State. Article 338 provides for the appointment of a Special H

A Officer for Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them and to report to the President upon the working of those safeguards. Then come Articles 341 and 342 which may be reproduced at this stage :

B "*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, C as the case may be.

342. Scheduled Tribes. – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes D 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."

Clause (2) of Article 341 empowers Parliament to include or exclude by E law from the list of Scheduled Castes or Scheduled Tribes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe. Similar provision is to be found in clause (2) of Article 342 in relation to any tribe or tribal community, etc. Both these provisions further state that save as aforesaid a notification F issued under clause (1) of the respective Articles shall not be varied by any subsequent notification.

On a plain reading of clause (1) of Articles 341 and 342 it is a manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to G be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, the Parliament can be law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that H limited purpose the notification issued under clause (1), shall not be varied

by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

The Petitioners herein are aggrieved because the state of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless the concerned person is shown to be a permanent resident of the State of Maharashtra on August 10, 1950 in the case of Scheduled Castes and September 6, 1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated The Constitution (Scheduled Castes) Order, 1950 and The Constitution (Scheduled Tribes) Order, 1950. The Petitioners, therefore, contended that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being, contrary to the letter and spirit of Articles 341 and 342 of the Constitution. The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, 1950 and The Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of Social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their oppressors. Earlier they did not experience any difficulty in obtaining

A caste/tribe certificates to secure benefits available to the Scheduled Castes and Scheduled Tribes in the State of Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to Chief Secretaries to all State Governments/Union Territories on March 22, 1977.

B

Before we refer to the contents of the communication dated March 22, 1977 it may be advantageous to notice the relevant provisions of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 made in exercise of powers conferred by Article 341(1) and Article 342(1) respectively of the Constitution. In the C order first mentioned Clause (2) provides as under :–

> "2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts to (XXII) of the Schedule to this order shall, in relation to D the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of the Schedule."

E Clause (2) of the second mentioned Order reads as under :

> "2. The Tribes or tribal communities, or part of, or groups within, tribes or trial communities, specified in Parts I to XIX of the Schedule to this Order shall, in relation to the State to which those parts respectively relate, be deemed to be Scheduled Tribes so far F as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Scheduled."

The Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particular Scheduled Caste/Scheduled Tribe were not issued strictly in accordance with the principles governing the G issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the concerned authorities. With a view to clarifying the legal position the communication of March 22, 1977 came to be issued. The relevant part of that communication may be reproduced for ready refer- H ence ;

"As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe Status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not both be treated to belong to Scheduled Caste/Tribe or *vice-versa*. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it cannotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribes in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in his case, say for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that with a view to ensuring the veracity of permanent residence of a person and that of the caste/tribe to which he claims to belong, the Government of India made a special provision in the proforma proscribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated August 6, 1975 indicated the authorities locality-wise who should issue the certificates. The communication then proceeds to add :

A "Thus the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another District. Nor can such an authority of one State/Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular residential Order, has been in a different State/Union Territory."

B

This was emphasised because only the revenue authorities of the locality of which the individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance C of the certificate. In regard to persons born after the date of the notification of the relevant Presidential Order, the communication states that the place of residency for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under D which they claim to belong to such a caste/tribe.

Subsequent to the issuance of the said communication by the Government of India, the Commissioner for Scheduled Castes and Scheduled Tribes submitted his 22nd Report wherein he pointed out that instances had come to his notice where false certificates were produced by E Non-Scheduled Caste/Scheduled Tribe persons to secure government service or admission to educational institutions. The report disclosed that such certificates were being issued without the authority issuing the same being even aware of basic requirements necessary for such certificates. On the basis of the recommendations made by the Commissioner and having F regard to the procedure adopted by the State of West Bengal which was commended for acceptance by the Commissioner, the Government of Maharashtra, in modification of the existing orders directed that caste certificates issued by the Special Executive Magistrates should be treated as 'preliminary certificates' and final certificates should be issued only by the Executive Magistrate authorised by the District Magistrate in that G behalf. It was also directed that Special Executive Magistrates should certify only the castes to which they themselves belonging. The Government state that if despite these instructions incorrect caste certificates are issued, a serious view will be taken. In the instructions appended to the said Government Order it was, *inter alia* stated in Paragraphs 13 and 19 as H under :

"13. Caste certificates should be issued only to those who have ordinary residence of the place within the jurisdiction of the competent authority. Ordinary residence means residence which is not for the purpose of service, employment, education, confinement in jail, etc. In short, it means permanent residence and not a temporary residence.

19. Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a scheduled Tribe only in relation to the State from which he has migrated. The competent authority should not, therefore, issue a caste certificate to a person from other State, whether he is ordinary (sic) residing in this State or not."

By the subsequent letter of February 12, 1981, it was further clarified that in order to become eligible for being treated to be a member of Scheduled Caste/Tribe in relation to the State of Maharashtra a person should be a permanent resident of the State of Maharashtra before August 10, 1950 and September 6, 1950, respectively, the dates of the notifications of the respective Presidential Orders of 1950 scheduling the Castes/Tribes in relation to the State of Maharashtra. Since there was no State of Maharashtra in 1950 it would be reasonable to understand it to mean the geographical are a now forming part of the State of Maharashtra. At the foot of the proforma of the Certificate the following note was appended :

Note : "The term "ordinarily reside(s)" used here will have same meaning as in Section 20 of the Representation of Peoples Act, 1950."

Section 20 of the Representation of the People Act, 1950, reads as under:

"*20 Meaning of "ordinarily resident".* – (1) A person shall not be deemed to be ordinary resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in

A the Constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.

B (2) A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein.

C (3) any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

D (4) Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date.

E (5) The statement of any such person as is referred to in sub-section (3) or sub-section (4) made in the prescribed from and verified in the prescribed manner, that but for his having the service qualification or but for his holding any such office as is referred to in sub-section (4) he would have been ordinarily resident in a F specified place on any date, shall , in the absence of evidence to the contrary, be accepted as correct.

(6) The wife of any such person as is referred to in sub-section (3) or sub-section (4) shall, if she be ordinarily residing with such G person be deemed to be ordinarily resident in the constituency specified by such person under sub-section (5).

(7) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be H made in this behalf by the Central Government in consultation with

the Election Commission.

(8) In sub-sections (3) and (5) "service qualification" means –

(a) being a member of the armed forces of the Union ; or

(b) being a member of a force to which the provisions of the Armed Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or

(c) being a member of an armed police force of a State, who is served outside that State; or

(d) being a person who is employed under the Government of India, in a post outside India."

In course of time persons belonging to Scheduled Castes/Scheduled Tribes who had migrated from one State to another in search of employment or for education purposes and the like, experienced great difficulty in obtaining Caste/Tribe Certificates from the State from which they had migrated. To remove this difficulty experienced by them the earlier instructions contained in the letter of March 22, 1977, and the subsequent letter of March 29, 1982, were modified, in that, the prescribed authority of a State/Union territory was permitted to issue the Scheduled Caste/Scheduled Tribe Certificate to a person who had migrated from another State on production of a genuine certificate issued to his father by a prescribed authority of the State of the father's origin except where the prescribed authority considered a detailed enquiry necessary through the State of origin before issue of certificate. It was further stated that the certificate will be issued irrespective of whether the Caste/Tribe in question is Scheduled or not in relation to the State/Union territory to which the person has migrated. Of course, this facility did not alter the Scheduled Caste/Tribe status of the person in relation to the one or the other State. The revised form of the certificate was circulated. Further, it was clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of education, employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin only and will be entitled to derive benefits from that State and not from the State to which he had migrated. By this clarificatory order forwarded to Chief Secretaries of all States/Union Territories, the only facility extended

A was that the prescribed authority of the State/Union Territory to which a person had migrated was permitted to issue the certificate to the migrant on production of the genuine certificate issued to his father by the prescribed authority of the State of the father's origin provided that the prescribed authority could always enquire into the matter through State of origin if he entertained any doubt. The certificate to be so issued would be B in relation to the State/Union Territory from which the concerned person had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate. This was re-iterated in a subsequent letter dated October 15, C 1987 addressed to Smt. Shashi Mishra, Secretary, Social Welfare, etc., in the State of Maharashtra. In paragraph 4 of that letter it was specifically stated :

> "Further, a Scheduled Caste persons, who has migrated from the D State of his origin, which is considered to be his ordinary place of residence after the issue of the First Presidential Order, 1950, can get benefit from the State of his origin and not from the State to which he has migrated."

So stating the proposal regarding reduction in the period of cut off point E of 1950 for migration was spurned. It was stated that the proposal could have been taken care of only if the lists of Scheduled Castes and Scheduled Tribes were made on All India basis which, it was said, was not feasible in view of the provisions of Articles 341 and 342 of the Constitution. It will thus, be seen that so far as the Government of India is concerned, since F the date of issuance of the communication dated March 22, 1977, it has firmly held the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State. G

The petitioners contended that having regard to the difficulty experienced by persons belonging to the Scheduled Castes/Scheduled Tribes, both in the State of origin and in the State to which they migrated, they were obliged to move the High Court for seeking an appropriate writ or H direction on the plea that the cut off date was arbitrarily fixed and was

therefore violative of Articles 14 and 19 and Articles 341 and 342 of the Constitution. Reference has been made by the petitioners to four judgments delivered by the Bombay High Court (i) W.P. No. 1572 of 1980 *Bhiwaji Eknath Kawle* v. *State of Maharashtra,* decided by the Aurangabad Bench of the Bombay High Court comprising Kanade and Deshpande, JJ. on February 3, 1982, (ii) W.P. No. 2499 of 1983 *Rajesh Khusalbahai Patel* v. *State of Maharashtra & Ors.* decided by the Bombay High Court, Pendse, J. On September 19, 1984, (iii) W.P. No. 4018 of 1987 *Rajesh Arjun Bhai Patel* v. *State of Maharashtra & ors.*, decided by the Bombay High Court, Daud, J. on July 31, 1989 and (iv) W.P. No. 2830 of 1989 *K.D. Borisa & Ors.* v. *State of Maharashtra & Ors.* decided by the Division Bench of Bombay High Court, Mookerjee, C.J. and Sharda Manohar, J., dated September 28, 1989 granting reliefs to the petitioners. The petitioners contend that notwithstanding the pronouncements of the Bomaby High Court in the aforesaid writ petitions persons belonging to the Scheduled Castes/Scheduled Tribes continue to experience difficulties in securing certificates from the State of origin as well as the State to which they had migrated on account of the instruction issued by the Government of India as contained in the communication dated March, 22, 1977 and the subsequent communications referred to earlier. The petitioners have, therefore, move this Court so that an authoritative pronouncement of this Court may introduce a uniform pattern in regard to the issuance of certificates to the persons belonging to the Scheduled Castes/Scheduled Tribes without being compelled to knock at the doors of different High Courts.

In the counter filed on behalf of the State of Maharashtra, it is contended that the question raised in this petition has been conclusively answered by a Constitution Bench of this Court in *Marri Chandra Shekhar Rao* v. *Dean Seth G.S. Medical College and others,* (1990) Supp. (1) Scale 7 = [1990] 3 SCC 130, and as such the petition is liable to be dismissed. Without prejudice to this preliminary contention, it is pointed out that the expression 'in relation to that State' read with the words 'for the purposes of this Constitution in Articles 341 and 342 leave on manner of doubt that the specification made is 'in relation to that State' for which it is made i.e. the State of origin and not the State to which a person migrates. That is because the concept of backwardness in Articles 15 and 16 is a relative one varying from area to area and region to region and hence it is not permissible to generalise any Caste or any Tribe as a Scheduled Caste or as Scheduled Tribe for the whole of the contrary. Therefore, a person belong-

A ing to a Scheduled Caste or a Scheduled Tribe in relation to a State would require necessary protection and benefits in that State to bring about equality but the social environment of the State to which he migrates may not be the same as in the State of his origin and therefore he cannot claim the benefits and privileges available to Scheduled Castes and Scheduled Tribes in the State to which he migrates. Therefore, the contention of the B petitioners that on migration the caste or Tribe of the concerned person does not change and if such person is denied the concessions, benefits and privileges available to Scheduled Castes and Scheduled Tribes in the State to which he migrates, such a denial would be in violation of Article 14 of the Constitution, in that, the right to equality and equal treatment would C be denied, cannot be sustained. For the very same reason, the challenge to the communications and circulars issued by the Government of India and the Government of Maharashtra is without merit. It is, therefore, contended by the deponent that there is no merit in this petition and the same should be dismissed.

D Unfortunately, even though the main challenge is to the communications/circulars issued by the Government of India, no counter has been filed on behalf of the Union of India even though considerable time has elapsed since the issuance of notice on August 17, 1990. Even on February 12, 1991, the learned counsel for the Union of India reported that he had not been able to obtain instruction from the concerned Ministry as to the E stand that the Union of India may like to take on the question raised in this petition. On that occasion, we stated that we consider it necessary that the Union of India should clearify its stand so that the Court may receive assistance from the learned counsel representing the Union of India to enable it to effectively resolve the issue. Reluctantly, this Court extended F the time by another two weeks to enable it to do so. The Secretary to the Ministry of Welfare was also directed to take appropriate steps to ensure the filing of a counter clarifying the stand of the Union of India before the next date of hearing, namely, March, 5, 1991. A copy of the order was sent to the Secretary to enable him to pursue the matter and ensure that the counter affidavit was filed before the next date. Unfortunately, despite the G indulgence given by this Court, no counter affidavit has been filed on behalf of the Union of India. What a sorry state of affairs that even after the highest officer in the Ministry is sounded the lethargy continues. So we have to decide the issue without a counter from the Central Government.

H The petition came up for final disposal before a Bench of three

learned Judges of this Court on March 12, 1991. Having heard arguments for three days, the learning Judges passed the following order on March 15,1991 : A

> "We have heard these matters at some length but we have come to the conclusion that the problem raised in these petitions is likely to affect various Fundamental issues regarding the recognition of Scheduled Castes and Scheduled Tribes under Articles 341 and 342 of the Constitution, read with Presidential Orders in this context. In our opinion, these are appropriate matters to be placed before a Constitution Bench of this Court. The papers may be placed before the Chief Justice for necessary directions in this behalf." B C

That is how the matter came up for final disposal before us.

We may incidentally mention that an interim application No. 1 of 1990 was taken out for permission to proceed in a representative capacity. An order was passed on that application on August 17, 1990 directing notice to issue returnable on October 3, 1990. D

It is a matter of common knowledge that before and during the British Rule also the social order in India was of graded inequality. During the freedom struggle some of our leaders strived to bring about social integration to give a fillip to the independence movement. The need to bring about equality was strongly felt. After independence when the Constitution was being framed for free India, considerable emphasis was laid on the need to secure equality. The debates of the constituent Assembly bear testimony to this felt need. The Preamble of our Constitution, which is aptly described as the conscience of our Constitution, promises to secure to all citizens 'equality of status and of opportunity'. In the Chapter on Fundamental Rights, Article 14 emphatically states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But then the Constitution-Makers were also aware of the prevailing inequality in the Social structure of the country and, therefore, felt the need to correct this imbalance through appropriate provisions. While Article 15(1) in unmistakable terms provides that the State shall not discriminate against any citizen on grounds only of religion, caste race, sex, place of birth or any of them, Article 15(4) says that nothing in the foregoing paragraph of the said Article shall prevent the State from E F G H

A making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. So also Article 16(1) posits that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and clause (2) thereof adds
B that no citizens shall, on grounds of religion, race, caste, sex descent or place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State. But then clause (4) of Article 16 provides that nothing in the foregoing part of the Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens
C which, in the opinion of the State, is not adequately represented in services under the State. Article 19, insofar as relevant for the purposes of this petition, states that all citizens shall have the right to move freely throughout the territory of India and to reside and settled in any part of the territory of India. The submission of the learned counsel for the
D petitioner was that since Article 19 confers a right of free movement throughout the territory of India and a right to reside and settle in any part of the territory of India, persons belonging to the Scheduled Castes and Scheduled Tribes have a right to move from one State to another without hindrance and to reside and settled in any other State. There can be no
E doubt that this is a fundamental right and members belonging to the Scheduled Castes/Scheduled Tribes specified in one State have a right to free movement to another State and to reside and settle in the other State if they so desire. As stated earlier certain privileges have been conferred on members belonging to the Scheduled Castes and Scheduled Tribes in
F Part XVI of the Constitution, namely, Articles 330, 332, 335 and 336 which we have referred to earlier. But as pointed out earlier on a plain reading of Clause (1) of both Articles 341 and 342, extracted earlier, it becomes obvious that the power of the President is limited to specifying the castes/tribes which shall, 'for the purposes of Constitution', be deemed to be scheduled Castes or Scheduled Tribes 'in relation to a State or a Union
G Territory', as the case may be. The contention of the learned counsel for the petitioners was that the legal position explained in the communication of the March 22, 1977 and subsequent communications flowing therefrom and referred to earlier was not consistent with the language of Articles 341 (1) and 342 (2) and was even otherwise violative of the concept of equality
H enshrined in Articles 14, 15, 16 and 19 of the Constitution. The learned

counsel further pointed out that the decisions of the Bombay High Court referred to in the earlier part of this judgment and the decisions of the Gujarat High Court in *Kum. Manju Singh* v. *The Dean, B.J. Medical College and others*, AIR (1986) Gujarat 175 and *State of Gujarat* v. *R.L. Patel*, AIR (1992) Gujarat 42 as well as the decision of the Karnataka High Court in *P.M. Muni* v. *Karnataka Public Service Commission*, (1981) LAB IC 1345 should be approved as they have rightly held that the words 'for the purposes of this Constitution' Should not be read as subservient to the words 'in relation to that State'. If so interpreted the view expressed by the Government of India in the communication dated March 22, 1977 would be wholly erroneous and in violation of the fundamental rights referred to earlier. He, therefore, contended that since the Maharashtra Government order of March 21, 1979 follows the interpretation placed by the Government of India in the communication of March 22, 1977, the former must also be held to suffer on the same vice of constitutional invalidity and opposed to the spirit and purpose of Articles 341(1) and 342(1). On the other hand the learned counsel for the Union of India, though handicapped for want of a counter , and the learned counsel for the State of Maharashtra placed strong reliance on the Constitution Bench decision in *Marri Chandra* and submitted that these very submissions were canvassed before the Constitution Bench by Mr. Raju Ramachandran, and were spurned. If we agree with the submission of the learned counsel for the respondents that the point at issue in this petition stands covered by the decision of the Constitution Bench in the aforesaid case nothing further would remain for us to decide. It would, therefore, be advantageous to straightaway refer to the decision in *Marri Chandra's* case.

Marri Chandra was born in Tanali in the State of Andhra Pradesh and belonging to Gouda community, popularly known as 'Goudi'. This community was specified as a Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950 as amended till then. His father had obtained a Scheduled Tribe certificate from the Tehsildar on the basis whereof he secured employment in the quota reserved for Scheduled Tribes in a Government of India Undertaking and was posted in Bombay, State of Maharashtra. The petitioner was then aged about 9 years. He persecuted his studies in Bombay and passed the 12th standard examination held by the Maharashtra State Secondary and Higher Secondary Examination Board. Thereafter he sought admission to the respondent-college claiming benefit of reservation as one belonging to the Scheduled

A Tribe. He was, however, denied admission in that quota though Scheduled Tribe candidates who had secured lesser marks than him but whose State of origin was Maharashtra were admitted. The denial of admission was based on the circular dated February 22, 1985 issued by the Government of India which has already been referred to by us. Having failed to secure admission in any medical college in the quota reserved for Scheduled Tribe B candidates, he questioned the denial before this Court under Article 32 of the Constitution. A Constitution Bench headed by Sabyasachi Mukharji, CJ., as he then was, examined the question whether one who is recognised as a Scheduled Tribe in the State of his origin continues to have the benefits or privilege or rights in the State to which he migrates. In paragraph 6 of C the Judgment the precise question was formulated as follows :

> "The question, therefore, that arises in this case, is whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had, as he states, a Scheduled Caste certificate in the State of Andhra Pradesh?"

D

In answering this question the Constitution Bench was called upon to interpret Articles 341 and 342 of the Constitution and determine what the expression 'in relation to that State' read in conjunction with 'for the purposes of this Constitution' seeks to convey. After referring to the E provisions of Articles 14, 15 and 16 and the decision of this Court in *Pradeep Jain* v. *Union of India*, [1984] 3 SCC 654 the Constitution Bench took notice of the fact that Scheduled Castes and Scheduled Tribes had to suffer social disadvantages and were denied facilities for development and growth in certain states. To grant equality in those States where they F suffered and were denied facilities for development and growth certain protective preferences, facilities and benefits in the form reservation, etc., had to be provided to them to enable them to compete on equal terms with the more advantageous and developed sections of the community. It is not necessary to dilate on this point as the Constitution itself recognises that members belonging to the Scheduled Castes and Scheduled Tribes and G other backward classes have to be given certain incentives, preferences and benefits to put them on an even keel with others who have hitherto enjoyed a major share of the facilities for development and growth offered by the State, so that the former may, in course of time, be able to overcome the handicap caused on account of denial of opportunities. The interpretation H that the Court must put on the relevant constitutional provisions in regard

to Scheduled Castes/Schedule Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that The language of Clause (1) of both the Articles 341 and 342 is quite plain and unabmiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution. It must also be realised that before specifying the castes or tribes under either of the two Articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made 'in relation to that State' can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is 'for the purposes of this Constitution' meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these Articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a specially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Cases and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under :

> "In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the Instant case, do

A require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach approach to the problem. If one bears this basic in mind, then the determination of the controversy in the instant case does not become difficult.

B We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled 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 C 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. There- D fore, 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 E 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. That is why in answer to a question by Mr. Jaipal Singh, Dr. Ambedkar answered as under :

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> "He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing G the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form H of some clause in his Constitution. But so far as the present

Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

Lastly the Constitution Bench referred to the cleavage in the views of different High Courts on the interpretation of Articles 341 and 342 of the Constitution and the consequential orders passed by the Government of India and the State Governments. It referred to the two decisions of the Gujarat High Court as well as the decision of the Karnataka High Court which place the interpretation canvassed before us by Mr. Raju Ramachandran. The other side referred to the decisions of the Orissa High Court in *K. Appa Rao* v. *The Director of Posts and Telegraphs, Orissa,* AIR (1969) Orissa 220, the decision of the Full Bench of the Bombay High Court in *M.S. Malathi* v. *Commissioner, Nagpur Division*, AIR (1989) Bom. 138 and the decision of the Punjab & Haryana High Court in *V.B. Singh* v. *State of Punjab*, ILR [1976] 1 P & H 769 which take the contrary view canvassed before us by the respondents. All these decisions were considered by the Constitution Bench which agreed with the latter view. It upheld the view expressed in the communication dated February 22, 1985 and negatived the challenge of the petitioner that the said view was *ultra vires* Articles 14, 15, 16 or 21. It, however, observed that in the facts and circumstances of the case and having regard to the fact that the petitioner student's career was involved it directed the authorities to consider whether the petitioner was a 'Goudi' and if yes, the institution may consider if he can be allowed to complete his studies in the institution. However, on the interpretation of the relevant provisions of the Constitution this Court was clear in its view that legally speaking he was not entitled to admission in the Scheduled Tribe quota.

We are in respectful agreement with the above view expressed by the Constitution Bench in the aforesaid decision. All the points which were

A canvassed before us by Mr. Raju Ramchandran were also canvassed by him in the said matter. They were negatived by the Constitution Bench. Nothing has been pointed out to persuade us to think that the view taken by the Constitution Bench requires reconsideration by a larger Bench. In fact we are in complete agreement with the interpretation placed on the various
B provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment. We, therefore, see no merit in this writ petition and dismiss the same. However, we make no order to costs.

A.G. Petition dismissed.