IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2805 OF 2024

Anand Shankarrao Kolhatkar and others -Vs.- Union of India and others

WITH

WRIT PETITION NO. 4759 OF 2021

Ku.Lataben Nilkanthbhai Dharmik and others

-Vs.-

Joint Commissioner & Vice-Chairman Scheduled Tribe Certificate Scrutiny Committee, Nagpur and others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr.S.R.Narnaware, Adv.for the petitioners.
Dr.Mr.Birendra Saraf, Adv.General with Ms Aakanksha Saxena, Adv. with Mr.A.S.Fulzele, Addl.GP with Mr.P. P. Pendke, AGP for the respondents-State.
Ms Mugdha Chandurkar, Adv.for respondents-Union of India.
Mr.S.S.Deshpande, Adv.for respondent Nos.2 and 3 in WP No.4759/2021.

CORAM : SMT. M. S. JAWALKAR &
RAJ D. WAKODE, JJ.

DATE : 21ST NOVEMBER, 2025

Heard learned counsel Mr.S.R.Narnaware for the petitioners, learned Advocate General Mr. Birendra Saraf with Adv. Ms Aakanksha Saxena with learned Additional Government Pleader Mr. A.S. Fulzele and AGP Mr. P.P. Pendke for the respondents-State, learned Advocate Ms Mugdha Chandurkar for respondents-Union of India and learned Advocate Mr. S.S. Deshpande for respondent Nos.2 and 3 in WP No.4759/2021.

2. Since the issue involved in these petitions is similar, the same are decided by this common order.

3. The present petitions are filed by the petitioners seeking declaration that the respondent No.6-Scrutiny Committee has no legislative competence under the Maharashtra Scheduled Castes and Scheduled Tribes, De-notified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as the "Act of 2000" for the sake of brevity). The vires of the said Act is challenged as unconstitutional, unreasonable and illegal on account of which the respondent No.6 has no jurisdiction to verify the caste claim of the central government employees like the petitioners and a prayer is also made to declare the Act of 2000 more particularly section 6(1) and Rule 9 of the Rules of 2003 as unconstitutional, unreasonable, arbitrary and in contravention of directions issued by the Hon'ble Apex Court in the case of **Ku.Madhuri Patil**, reported in **AIR 1995 SC 94** and in the case of **Dayaram v. Sudhir Bantham**, reported in **2011 (6) Mh.L.J. 414**.

4. There are two categories of the petitioners: first category comprises those petitioners who have retired and second category includes petitioners those are still in service. As there is challenge to the validity of the Act of 2000, specifically section 6(1) and rule 2(9) of the Rules of 2003 as unconstitutional, unreasonable, arbitrary and in contravention of directions of the Hon'ble Apex Court, this issue is taken up for hearing with the consent of the parties and at the request of the parties.

5. The petitioners are domiciled by birth in the State of Maharashtra. Since common question of law is involved in these petitions challenging the vires of the Act of 2000 and similar facts, grounds, challenge and prayers are involved, therefore, the present common petition is filed before this Court.

6. It is the case of the petitioners, who are all Central Government employees that they were appointed against the posts reserved for Scheduled Tribes Category on the basis of caste certificates showing them as belonging to Halba Scheduled Tribe, which was the only pre-condition mentioned in the appointment order. There was no communication requiring submission of a validity certificate duly verified from the respondent No.6-Scrutiny Committee. The power to issue caste certificate with Competent Authority under section 4 of the Act of 2000, any scrutiny for its validity would also be governed by the Act of 2000. the social status is being verified on the basis of which employment granted. It is the contention of the petitioners that as per the various office memorandum, the caste certificate were to be verified from the concerned District Magistrate, which was already verified and there was no necessity of further verification from the Scrutiny Committee since there was no term or condition in the appointment order of the petitioners being the employees of the Central Government to submit the validity certificate. It is further contention of the petitioners that they were appointed prior to 1995 and as per the parliamentary report, such employees are exempted or excluded from the

verification process. The respondent No.4 issued communication to the petitioners after completion of long years of service, calling upon them to produce verification of caste status by the Caste Scrutiny Committee constituted by the Government of Maharashtra. The respondent No.4 forwarded the documents pertaining to the caste of the petitioners. The respondent No.4 issued a communication to the petitioners directing them to make an online application to the Scrutiny Committee for verification of the caste claim. The petitioners have given their detailed explanation relying upon the O.M. and other O.Ms. which spell out that the caste certificate should be verified through the District Magistrate concerned. Thereafter, the respondent No.4 issued a memorandum under Rule 14 of the CCS (CCA) Rules, 1965 that the act of the petitioners allegedly avoiding to submit the validity certificate which constituted act of misconduct as mentioned in the Article of Charge. No application was made by the petitioner by supplying copies of O.Ms./ Circulars/instructions etc. but without taking into consideration the validity of the query raised in the application by the petitioners, hurriedly proceeded to appoint the enquiry officer and the presenting officer. They are facing enquiry which is the cause for challenge.

7. The petitioners are challenging the vires of the Act of 2000 on the ground that the Scrutiny Committee has no power, authority or jurisdiction to verify the caste claim of the Central Government employees. The petitioner No.1 superannuated on 31/01/2024. Thereafter, respondent

No.4 issued memorandum under Rule 14 of CCS (CCA) Rules, 1965 alleging that the acts of the petitioners in allegedly avoiding to submit the validity certificate, constituted an act of misconduct as mentioned in the article of charge. It is contention of the petitioners that the Committee on the Welfare of Scheduled Castes and Scheduled Tribes has submitted its 9th report to the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) (DoPT) in the month of December, 2021 specifically observing that the Supreme Court judgment for not verifying the caste certificate issued before 1995 have been followed in letter and spirit. It is further contention of the petitioners that the service conditions of the petitioners are governed by the Central Legislation under the Constitution of India and therefore, the State Legislation has no power or jurisdiction to encroach upon the service conditions as well as verification of caste claim of the Central Government employees. The petitioners further submit that section 6(3) of the Act of 2000 to the extent it empowers the Scrutiny Committee to verify the caste claim of the employees of Central Government and decide validity of the same is ultra vires of powers of State Legislature.

8. The learned counsel for the petitioners drew our attention to the Seventh Schedule, Union List Entry No.70, which is the subject on which the Central Government can pass Legislation, which pertains to Union Public Services or Union Services and Union Public Service Commission. Whereas in List-2 i.e. the State List, there is State Public

Services, State Public Service Commission. Thus, the Central Government and the State Government has their different jurisdiction to legislate. The State Legislature cannot pass any enactment encroaching the jurisdiction of Central Legislation subject under List-1.

9. The learned counsel for the petitioners further submitted that the List-I (Union List Entry No.70) of the Seventh Schedule of the Constitution of India pertains to the services (Union Public Service, All India Services, Union Public Service Commission) are referred there making it clear that the parliament alone has power to enact law in respect of subjects mentioned in the Entry No.70. Similarly Entry No.41 of the list to (State List) pertains to "State Public Service Commission", the Constitution of India thus clearly demarcates the power of parliament and the power of State Legislature to enact law in respect of Union Public Service and State Public Service. The laws relating to provision of section 6(3) of the Act of 2000 which are enacted by the State Legislature are void in law to the extent indicated above. It is the contention of the petitioners that the memorandum issued by the respondent Nos.4 and 5 to submit online proposal is totally contrary to section 6(3) of the Act of 2000. The statutory provision under the said section clarifies that it is for employer to refer the caste claim for validation to the Scrutiny Committee and the employer cannot issue notice/ memorandum, etc. The petitioners relied on the judgment delivered by this Court in **Writ Petition No. 3368/2010** dated 09/09/2010 (*Dr.Sadique Hussain Sheikh Azim*

Qureshi v. Divisional Caste Certificate Scrutiny Committee and others) wherein this Court held in para-10 as under:

> "*10. We are thus of the view that sub-section (3) of Section 6 confers on the appointing authority a power coupled with a duty to make an application to the concerned Scrutiny Committee for validation of the caste certificate of a person selected for appointment where such a person has not obtained such a validity certificate. It is not open for the appointing authority to avoid the step of referring such a caste certificate for verification to the scrutiny committee and issue a show cause notice for taking action against an employee on the basis that the candidate does not belong to a Scheduled Caste, etc. howsoever justified the appointing authority may be in entertaining a doubt about the genuineness of a caste certificate.*"

10. The petitioners relied on the latest office memorandum dated 29/03/2023 issued by the DoPT, wherein the reference of the Parliamentary Committee Report was made. Therein the DoPT issued directions to release the entire retiral benefits to the employees as they cannot be withheld on the ground of delay in referring the caste claim to the Scrutiny Committee (pertains to petitioner No.1). The main ground of challenge is the validity on the ground that the petitioners are employees of the Central Government and therefore, State Legislation has no power to legislate in respect of central employees, which is nothing but an overreaching power. The citations relied on by the petitioners are being discussed in due course at proper places.

11. The contention of learned Advocate General (AG) Dr.Shri Birendra Saraf for the respondents-State is that issuance of caste certificate is within the jurisdiction of State. The caste certificate is to be issued by the Competent Authority of the State. If a person is an employee of Central Government deriving benefits available to the person belonging to SC or ST category, he would be governed by the Act of 2000. Therefore, there is nothing unconstitutional in section 6(3) of the Act of 2000. It is contention of the learned AG that the issue in regard to whether this section is applicable to the Central Government employees, who were appointed prior to 1995 is a different issue. For that reason, either section 6(1) or 6(3) of the Act of 2000 cannot be held to be unconstitutional. The learned AG drew our attention to the Seventh Schedule, List-I, which is a Union list. Though in Entry No.70 of List-I Union Public Service or All India Services and Union Public Service Commission is there and in Entry No.41 of Second List of State the subject upon which the State Legislation can pass enactment is State Public Services, State Public Service Commission, however, in concurrent list Entry No.20 pertains to the subject of 'economy and social planning' which includes policy of reservation. The citations relied on by the learned AG are discussed at appropriate places in the order.

12. The Act of 2000 was published after having received the assent of President in the Maharashtra Government Gazette on 23/05/2001, therefore, what is argued by the learned counsel for the petitioners is that the

State Legislation received assent of Governor in the Maharashtra Government Gazette on 23/05/2001 cannot apply this Legislation to the Central Government employees, is having no substance. If section 3 of the said Act is perused, it reads thus that *any person belonging to any of the SC, ST, De-notified Tribe, Nomadic Tribe, Other Backward Classes or Special Backward Classes require to produce a caste certificate in order to claim the benefit in reservation provided to such caste tribe or classes either in any public employment or for submission into any educational institution or any other benefit under any special provision made under Article 15 of the Constitution of India or for purpose of contesting or electing post in any local authority or in the cooperative societies, etc. are required to apply such form and in such manner and may be prescribed under the Competent Authority to issue a caste certificate*. Thus, from this section, it is clear that if any benefit of reservation is claimed or provided to such caste, tribe or classes, the person is required to produce a caste certificate. In view section 4 of the Act of 2000, it has to be issued by a Competent Authority. Section 6 thereof provides for verification of caste certificate by Scrutiny Committee which reads as under:

> "**6. Verification of Caste Certificate by Scrutiny Committee.**
>
> (1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4

specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis). Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions who has not obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificates and adhere to the time limit for verification and grant of validity certificate, as prescribed."

13. Section 6(3) enables appointing authority of Central as well as State Governments, local authority, public sector undertakings, educational institutions to make an application as per the form and manner prescribed by the Scrutiny Committee for the verification. The learned counsel for the petitioners specifically submitted that section 6(3) wherein Central Government Authorities are also directed to make an application submitting proposal is unconstitutional and it is ultra vires.

14. The learned counsel for the petitioners also challenge rule 9 of the Rules of 2003. However, there is no submission on section 6(1) of the Act of 2000 and rule 9 of the Rules of 2003. Therefore, now the question is limited to validity of section 6(3) of the Act of 2000.

15. The citation relied on by the learned counsel for the petitioners are mostly on the merits of the case and not on the issue of validity of section 6(3) of the Act of 2000.

16. The learned AG drew our attention to para-53 of the judgment in **Chairman and Managing Director, Food Corporation of India and others v. Jagdish Balaram Bahira and others, (2017) 8 SCC 670**, which is reproduced as under:

> "53. The rationale which weighed with the Bench of two Judges which decided *Kavita Solunke*[25] was that if the Halba-Koshti had been treated as Halba even before the appellant had joined the service and if the only ground for ouster was the law declared in *Milind* [3], there was no reason why protection against ouster to appointees whose applications had become final be not also

extended to the appellant. Placing reliance on the decision in *Kavita Solunke*[25] another Bench of two Judges of this Court in *Shalini*[27] propounded a test of dishonest intent for the grant or denial of protection to persons whose caste claims had been invalidated. The view of the Court emerges from the following extract contained in para 9 of the decision which reads thus: (*Shalini case*[27]. SCC pp. 534-35).

> "9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with the Scheduled Castes or Scheduled Tribes, etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe."

25 Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609
3 State of Maharashtra v. Milind (2001)1 SCC 4: 2001 SCC (L&S) 117
27 Shalini v. New English High School Asso.(2013) 16 SCC 526: (2014) 3 SCC (L&S) 265

The above observations must be read together with those in para 11 extracted either) where the Court held that a dishonest intent requires legal retribution In *Shalini*[27] the Court noticed the provisions of Section 10 of Maharashtra Act 23 of 2001 (which the earlier decision in *Kavita Solanke*[25] had not noticed) but nonetheless held that in order to attract the provisions of Section 10 a dishonest intent for the purpose of claiming a benefit reserved for the Scheduled Castes or Tribes or a designated backward class is necessary. The expression "false" contained in Section 10 of Maharashtra Act 23 of 2001 is construed a necessarily require the presence of mens rea or a dishonest intent."

27 Shalini v. New English High School Asso.(2013) 16 SCC 526: (2014) 3 SCC (L&S) 265
25 Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609

17. The learned AG relied on the judgment in **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others, (1994) 6 SCC 241**, wherein the Hon'ble Apex Court held in para-16 as under:

"16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive

> Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act. 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases"

18. The learned AG further placed reliance on judgment in **Chairman and Managing Director, Food Corporation of India and others v. Jagdish Balaram Bahira and others** (*supra*), wherein Hon'ble Apex Court observed in para-6 why there was need of constitution of Caste Scrutiny Committee and held as under:

> "6. In 1994, the systemic usurpation of benefits by persons who did not belong to the beneficiary group came to the fore before this Court. There was before this Court, an urgent need expressed to set down a framework to regulate the grant of caste certificates and to scrutinise claims. ……."

It is further observed in para-18 that -

"18. …….. An application for a caste certificate is required to be made to a designated authority constituted by the State Government. The competent authority has to be satisfied about the genuineness of the claim before it issues a caste certificate. Issuance of a caste certificate does not in itself conclude the level of scrutiny. The next stage of scrutiny is contemplated before the Scrutiny Committee which is conferred with a statutory status by the provisions of the Act."

It is further observed in para-65 as under:

"65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste. tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant

> of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment."
>
> (*emphasis supplied*)

19. The learned AG relied on the judgment of this Court in **Jaimala Jageshwar Barapatre v. Union of India and others, 2008 (1) Mh.L.J. 428**, wherein this Court held as under:

> "5. The challenge to the constitutional validity of the "Act No. 23 of 2001", as urged by the petitioner, can be summarized as follows:-
>
> (a) The subject of legislation - "Act No. 23 of 2001", is not covered by any of the Entries contained in the State List, nor is found in the Concurrent List. The residuary clause i.e., Entry No.97 would enable the Union Legislature to pass such a law and hence the State Legislature has no power.
>
> (b) The State is not in a position to show its legislative authority to legislate on the subject covered.
>
> (c) In case of *Dattatraya Ramrao Thorat vs. State of Maharashtra and others, 2003(5) Mh.L.J. 539*, the challenge was as to competence of the State Legislature to render a candidate duly elected to be disqualified under sub-section (4) of section 10 of the said Act in view of provision to that effect already contained in sections 12 and 16(2A) of the Bombay Provincial Municipal Corporations Act, 1949, and Article 14 of the Constitution of India, which, therefore, does not preclude challenge on other grounds.

> The challenge to the constitutional validity of the "Act No. 23 of 2001" is still open notwithstanding the Judgment of this Court."

20. The learned AG relied on the judgment of this Court (Aurangabad Bench) in **Ashabai Bhila Koli @ Ashabai Devman Borse v. Bharat Sanchar Nigam Ltd.and others** (*Writ Petition No.9885/2019 and other connected matters*), wherein this Court in para-2 H and I held as under:

> "2. …….
>
> H. Although, in the celebrated matter of **Kumari Madhuri Patil and another Va. Additional Commissioner, Tribal Development and others** reported in **AIR 1995 (SC) 94** (Page No. 37-50), the Apex Court issued directions for establishing scrutiny committee and vigilance cell. In the next judgment **Director of Tribal welfare, Government of Andhra Pradesh Vs. Laveti Giri and another** reported in **AIR (1995) 4 SCC 32**, the Hon'ble Apex Court observed that it was high time, that Government of India should have the matter examined in greater detail and bring out an uniform legislation. However, till this date no such Legislation is brought by Union of India regarding verification of caste certificate and submission of caste validity certificate. In this view of the matter, in absence of Legislation or Government order by Union of India and also in absence of any provisions under Service Regulations, order of appointment, promotion regarding submission of validity certificate by employees of erstwhile Telecom Department or B.S.N.L. impugned communication issued by respondent no. 3 is unsustainable in eyes of law.

I. Respondent placed reliance on the judgment in matter of **Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balram Bahir and others (2017) 8 SCC 670**. In the said matter, the applicability of the provision of Maharashtra Act No.XXIII of 2001 to the employees of B.S.N.L. *vis-a-vis* compulsion to submit caste validity certificate was not brought to the notice of Hon'ble Supreme Court. Said Judgment of Hon'ble Apex Court mainly deals with penal consequences of provisions therein like withdrawal of benefits and prosecution. Applicability of Section 6(3) of the Maharashtra Act No. XXIII of 2001 more particularly obligation to submit proposal and ultimate caste validity certificate by employee appointed under erstwhile department of Union of India subsequently Public Sector Undertaking was not subject matter before Hon'ble Supreme Court. Hence, ratio of said judgment is inapplicable to the present facts of the case. The cases referred in said judgment before Hon'ble Apex Court are mainly arising out of invalidation of caste claims and extending protection thereafter.

The learned Advocate for the petitioner further submits that, in present petition the petitioner is specifically taking exception to the power of B.S.N.L. to insist for submission of caste validity certificate by employees particularly on a ground of inapplicability of provisions of the Maharashtra Act No. XXIII of 2001 and secondly on the ground that there is no provision in Service Regulations or no any condition in order of appointment to submit caste validity certificate by employee of B.S.N.L.

It is further observed by this Court in para-10, as under:

"10. Some of the petitioners are appointed from the year 1982. According to the petitioners, at the time they were appointed there was no condition imposed submitting the validity certificate nor the Maharashtra Act No. XXIII of 2001 was in force, as such they cannot be directed to submit the validity certificate. The said argument of the petitioners is required to be repealed at the threshold. The Maharashtra Act No. XXIII of 2001 came into force as a result of the judgment of the Hon'ble Apex Court in case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others* (supra). In the said judgment, the Hon'ble Apex Court directed the State Governments to constitute committees assisted by vigilance cells to scrutinise and decide the cases expeditiously. The Apex Court in the case of *Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others* (supra) was dealing with the case of an employee of a Public Sector Undertaking. In the said case, the plea that appointments of the persons made prior to the date on which the Act came into force would not be required to submit validity was rejected. The Apex Court interpreted Section 7 of the Maharashtra Act No. XXIII of 2001. The Apex Court observed that the expression before or after commencement of this Act under Section 7 of the Maharashtra Act No. XXIII of 2001 indicates that the scrutiny committee constituted U/Sec. 6 of the Maharashtra Act No. XXIII of 2001 is empowered to cancel caste certificate whether it was issued prior to the enforcement of the Maharashtra Act No. XXIII of 2001 or thereafter. Absence of the word before or after commencement of the Act in Section 10 makes no substantive difference because withdrawal of benefit as provided U/Sec. 10 is an event which flows naturally and as plain

consequence of invalidation of a claim."

(*emphasis supplied*)

21. In **Sri. Sangappa M. Bagewadi S/o Mallappa Bagewadi v. The State of Karnataka and others** [*Review Petition No.100100/2024 in Writ Petition No.109307/2016 (GM-CC)*], wherein the Karnataka High Court held as under:

"28. The points that would arise for the consideration of this Court are;

i) **Whether, a caste certificate issued by the Tahasildar prior to the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation Appointment, etc.) Rules, 1992 coming into force can be verified by the DCVC or will have to be verified only by the District Magistrate?**

ii) **Whether after the Rules 1992 having come into force, it is only the DCVC who can verify a caste certificate?**

iii) **Whether the locus of the complainant can be looked into in a review petition?**

iv) **Whether the petitioner has made out any ground for review of the order dated 11.01.2024 passed in W.P.No.109307/2016?**

v) **What order?**

"30.6. There being 15 directions which had been issued by the Hon'ble Apex Court in ***Kumari Madhuri Patil's*** case. These aspects were considered in ***Dayaram's*** case and the Hon'ble Apex Court has categorically held in para-22 thereof that the directions No.1 to 15 are valid and laudable as they were made to fill the vacuum in the absence of any

legislation to ensure that only genuine Schedule Cast and Schedule Tribe candidates secure the benefits of reservation and the bogus candidates were kept out.

30.7. The Hon'ble Apex Court in ***Dayaram's*** case also held that the State could come up with suitable legislations in order to further strengthen the machinery and make it more Robust. These aspects have been considered by both ***Kumari Madhuri Patil's*** case and ***Dayaram's*** case. It is clear that it is a specialized agency, who is required to verify a caste certificate when there is any issue raised and it cannot be the Deputy Commissioner/District Magistrate who can verify the same since he does not have the wherewithal to do so."

22. The learned AG also submitted that the petitioners can approach Central Administrative Tribunal to get the constitutional validity of section 6(1) and 6(3) of the Act of 2000 to be decided. The learned AG relied on **L.Chandra Kumar v. Union of India, (1997) 3 SCC 261** wherein, it is observed that the challenge before the Hon'ble Apex Court is about "*section 5(6) of the Administrative Tribunal Act, where a question involving the interpretation of a statutory provision or rule in relation to the constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for*

adjudication before Single Member Bench or Bench which does not consist of a Judicial Member. So construed section 5(6) will no longer be susceptible to charges of an unconstitutionality and is therefore valid and constitutional."

In the same judgment the Hon'ble Apex Court held that "*Clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and Supreme Court under Articles 226/227 and 32 of the Constitution are unconstitutional ……. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the unvioble basic structure of our constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution.*"

The Tribunals created under Article 323-A and Article 323-B of the Constitution possess the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose Jurisdiction the Tribunal concerned falls.

The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even

in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner it was indicated.

23. It appears that the petitioners filed **Original Application Nos.258, 259, 260, 261 of 2019, 418, 420 of 2022 and 740, 577 of 2021** before the Central Administrative Tribunal and the learned Tribunal delivered its judgment on 06/03/2024, wherein paras 2.3 and 2.4 are reproduced as under:

> "2.3 It is further alleged that the applicant retired on attaining superannuation on 31st January, 2022. Accordingly, relieving order was passed on 31st January, 2022. After the applicant was relieved, charge sheet dated 28th January, 2022 came to be served on the applicant on 31st January, 2022 after 1:15 pm. It is alleged in the charge sheet that the applicant failed to maintain absolute integrity violated the law and failed to maintain high ethical standards and honesty by falsely availing reservation benefits meant for scheduled tribes. The applicant replied to the charge sheet. On 21st March, 2022, Disciplinary Authority appointed Inquiry Officer and Presenting Officer. The inquiry is being conducted under CCS(CCA) Pension Rules. After retirement, inquiry should be conducted under Rule 9 of CCS(CCA) Pension rules. The applicant has challenged this charge sheet in this O. A.
>
> 2.4 Respondents filed their reply contending that as per the requirements of the Maharashtra

> Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukt Jatis), Nomadic Tribes. Other Backward Classes And Special Backward Category (Regulation of Issuance And Verification of Caste certificate Act, 2000), the applicant was called upon to get his certificate duly validated from the caste scrutiny committee as per the requirement of the Act. Vide letters dated 3rd April 2014, 17th April 2014, 8th May 2014, 11th July 2018, 26th September 2018, 22nd April 2019, 2nd July 2019, 14th December 2020, 20th August 2021, 23rd September 2021, 2nd December 2021 and finally on 22nd December 2021, the applicant was called upon by the respondents to get his cast certificate validated or provide information in Form E&F to enable the employer to make the application to the caste scrutiny committee, but the applicant failed to do so. The Act requires that a person who seeks benefit of a caste certificate has to get it duly verified by making application to the scrutiny committee."

For the sake of reference, it would appropriate to quote section 4(2) of the Act of 2000.

> "A caste certificate issued by any person, officer or authority other than the Competent Authority shall be invalid. The Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the scrutiny committee."

It is further observed by the learned CAT in para-58 as under:

> "58. From this section, it is apparent that the certificate issued by any authority other than the caste scrutiny committee is declared to be invalid.

> As indicated earlier, in terms of judgement of Bombay High Court in the case of ***BSNL & Advasi Samaj (supra)***, the provisions of the Act are applicable to the Central Government servants. Therefore, these certificates are no longer valid and the applicants are required to get these certificates verified / validated from caste scrutiny committee. As held earlier, Supreme Court in the case of ***Jagdish Balram Bahira***... in para 69.6 has clearly held that a certificate has not attained finality unless and until it is validated by the caste scrutiny committee."

24. As held in **L. Chandra Kumar** (*supra*), the learned CAT has jurisdiction to decide the constitutional validity, however out of two Members, one Member should be Judicial Officer. After getting this judgment against the petitioners instead of challenging the order passed by the learned CAT, they again challenged the validity of section 6(1) of the Act of 2000 and rule 9 of the Rules of 2000. However, there is no challenge to Section 6(3) of the Act of 2000 as unconstitutional though it is argued vehemently. There is no prayer challenging the order of CAT wherein constitutional validity of section 6(1) of the Act of 2000 and Rule 9 of the Rules, 2003 was challenged and it was rejected by the learned CAT. As held in **L.Chandra Kumar** (*supra*), the appropriate remedy would have been to challenge the order passed by the CAT and not to directly approach the High Court, specifically when there is already one adjudication by the CAT. Unless the order passed by the CAT is set aside, the challenge in this petition would not withstand. Admittedly, the petitioners are deriving the benefits from the caste certificate issued as per the

enactment of State of Maharashtra. There is no other procedure laid down by the Union of India governing the issuance of caste certificate.

25. It would be seen from the order passed by the learned CAT in original applications referred above, the same petitioners have raised similar issues before the CAT. In the judgment of para-17, the learned CAT relied on **Jagdish Balaram Bahira** (*supra*) and cited para-13 as under:

> "*13. The legislature in the State of Maharashtra enacted the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis). Nomadic Tribes, Other Backward Classes and Special Backward Category Regulation of Issuance and Verification of) Caste Certificate Act, 2000. The legislation essentially takes care, for that state of the concerns that were expressed in the decision of this Court in Madhuri Patil by providing a statutory framework to regulate the issuance of caste certificates, scrutiny and verification of claims and the consequences to ensue upon the invalidation of a claim. The legislation received the assent of the President and was published in the Gazette on 23-5-2001. By a Notification dated 17-10-2001, the Act came into force from 18-10-2001, in terms of Section 1(2). Section 3 requires every person claiming to belong to a Scheduled Caste or Tribe, Other Backward Class or any other designated tribe or community seeking to obtain public employment or an admission to an educational institution or contesting an electoral seat in a local authority or a cooperative society to apply for the issuance of a caste certificate to a competent authority named by the State Government. Section 4 empowers the competent authority to issue a*

> *caste certificate upon being satisfied of the genuineness of the claim. Section 6 requires the State Government to constitute Scrutiny Committees for the verification of caste certificates issued by the competent authorities constituted under Section 4(1). Sub-section (2) of Section 6 requires the beneficiary of a caste certificate to submit an application to a Scrutiny Committee for the verification of the caste certificate and for issuance of a validity certificate. The appointing authority is similarly required by sub-section (3) to make an application to the Scrutiny Committee to verify the caste certificate.*"

26. The learned AG placed reliance on **Dayaram v. Sudhir Batham and others, (2012) 1 SCC 333** in support of his contention that till the appropriate legislation is passed, the Hon'ble Apex Court is having power to issue guidelines under Article 142 of the Constitution. The learned AG also placed reliance on **Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others, (2008) 13 SCC 170**, wherein Hon'ble Apex Court held in para-14 as under:

> "**14**. Similarly, the plea regarding rendering of services for a long period has been considered and rejected in a series of decisions of this Court and we deem it unnecessary to launch an exhaustive dissertation on principles in this context. It would suffice to state that except in a few decisions, where the admission/appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains

appointment to the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of the said categories, of appointment to that post, and does not deserve any sympathy or indulgence of this Court. He who comes to the Court with a claim based on falsity and deception cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour."

27. The learned AG also placed reliance on **Bank of India and another v. Avinash D. Mandivikar and others, (2005) 7 SCC 690**, wherein the Hon'ble Apex Court held as under:

"Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. The Scrutiny Committee examined the various documents and came to a definite conclusion that the documents were manipulated to present false claim. When the clear finding of the Scrutiny Committee is that he did not belong to a Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of the law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate.

On one hand the High Court faulted the reference to the Caste Scrutiny Committee which was made after about ten years and on the other hand accepted the findings of the Scrutiny Committee that Respondent 1 did not belong to a Scheduled Tribe as was held by the Scrutiny Committee. Mere delay in making a reference does not invalidate the order of the Scrutiny Committee. If the High Court felt that the

> reference was impermissible because of long passage of time. then that would have made the reference vulnerable. By accepting the findings of the Scrutiny Committee that Respondent I employee did not belong to a Scheduled Tribe, the observations about the delayed reference lose significance. The matter can be looked into from another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Mere delayed reference when the foundation for the same is alleged fraud does not in any way affect the legality of the reference."
>
> (*emphasis supplied*)

28. We have narrated the plea which was advanced by some of the petitioners before the CAT to demonstrate that though a challenge to the validity of Sec.6(1) of the Act of 2000, was raised and negated, the same has not been questioned here, which would in turn indicate that the petitioners who were parties before the CAT, had given up the plea. The arguments are advanced on the validity of Sec.6(3) of the Act of 2000.

29. Even otherwise since the plea of legislative incompetence of Sec.6(1), 6(3) of the Act of 2000 and Rule 9 of the Rules of 2003, has been argued, to settle the issue, we deem it appropriate to take it up. The basic challenge is on the ground that these provisions are being applied to employees of Central Government, P. S. U's etc. as it is contended that they would not be

covered by the Act of 2000, which is a State Act, which would be incompetent to govern the employment of the petitioners and persons similarly situated to them, who have secures employment with the Union and its undertakings as well as PSU's. In our considered opinion the challenge is fallacious for the reason that a challenge of the nature of legislative incompetence in enacting a Statutory provision cannot be entertained on the ground that the provision is being applied to a set of persons, to whom it is claimed that it should not be applied. Applicability of a provision, even wrongfully, has nothing to do with legislative competence as they are two totally different concepts altogether. While legislative incompetence would mean that the concerned legislature was incompetent to enact the provision, for lack of power or authority or otherwise; applicability is making the provision applicable to a set of persons, to whom, it is claimed to be not applicable.

30. In so far as legislative incompetence is concerned much stress is laid by Mr. Narnavare, learned Counsel for the petitioners, on entry 70 in List - 1, to contend that it would not permit the State to frame the aforesaid provisions, in so far as they are being made applicable to employees of the Union and P.S.U.'s.. He however does not dispute that the State is legislative competent to enact the Act of 2000, but for the aforesaid.

31. The scheme of the Constitution is germane. Article 246(1) of the Constitution confers power upon the Parliament to make laws with respect to matters enumerated in List-I of the Seventh Schedule. Entry 70 of List-I, which is being relied and referred to by the learned Counsel for the petitioners, relates to Union Public Services; All India Services; Union Public Service Commission. Article 309 of the Constitution empowers the appropriate legislature to make provisions to regulate the recruitment and service conditions of a person to be appointed to public services and posts in connection with the affairs of the Union, which include the Union Public Services and All India Services. Article 315(1) creates the Union Public Service Commission (UPSC). Articles 341 and 342 of the Constitution deal with Scheduled Castes and Tribes. Article 335 of the Constitution is the repository from which stems the entitlement of the persons belonging to the reserved categories to service and posts, in pursuance to which it is with the intention of upliftment of persons belonging to these categories, that certain benefits have been granted to them, in the matter of employment in different services by providing reservations to them.

32. It is this background that the Act of 2000 was enacted by which, vide sec.4(1) a Competent Authority was constituted to issue a Caste/Tribe certificate, which enabled a person belonging to the notified reserved categories to claim benefit to services and posts. In this context it is necessary to note that Sec.6(1) of the Act

of 2000, merely empowers the State to constitute one or more Scrutiny Committees, for the purposes of verification of the caste/tribe certificate issued by the Competent Authority in terms of Sec.4(1) of the Act of 2000. The purpose of the Act of 2000, is to ensure that genuine persons who belong to the notified reserve categories are granted the benefit of reservation and therefore the Act of 2000, brought into place a procedure for issuance of the caste/tribe certificate by the Competent Authority and further a mechanism in the form of Sec.6(1) empowering the State to constitute one or more Scrutiny Committees for verification of the Caste/Tribe certificates issued by the Competent Authorities under sec.4(1) of the Act of 2000. It would thus be apparent that none of the provisions of the Act of 2000, much less Sec.6(1) of Sec.6(3) thereof determine or relate to the service conditions of any category of persons, whatsoever. The Act of 2000, merely provides for the issuance of a caste/tribe certificate by a Competent Authority and its verification by the Scrutiny Committee. Similarly Rule 9 of the Rules of 2003, framed under the Act of 2000, merely speaks of the meetings and Quorum of the Scrutiny Committee and the majority decision to be the judgment of the Committee. The purpose of verification, as would be apparent is to ascertain the genuineness of the claim of a person of belonging to a particular caste / tribe, on the basis of which employment is secured. The caste/tribe certificate is issued by the Competent Authority, without any in-

depth enquiry into the claim made, and the genuineness as contemplated and is of a prima facie nature, based upon the documents submitted. There is no independent vigilance enquiry or for that matter even an enquiry regarding the authenticity of the documents submitted, for the purpose of grant of a caste/tribe certificate. This is apparent from a reading of Rules 3 and 4 as juxtaposed to Rules 11 and 12 of the Rules of 2003 and Rules 4 and 5 as juxtaposed to Rules 12 to 17 of the Rules of 2012. In that view of matter the challenge to Sec.6(1) of the Act of 2000 and Rule 9 of the Rules of 2003, on the ground of legislative incompetence must fail and is accordingly rejected.

33. That takes us to the plea regarding Sec.6(3) of the Act of 2000. Sec.6(3) of the Act of 2000, merely states that the appointing authority of the Central Government of P.S.U.'s shall make an application in the prescribed form for verification to the Scrutiny Committee of the Caste/tribe certificate, in case a person is selected for appointment with the Government. This is merely to enable the Central Government or the employee to verify the authenticity of the claim of the person securing employment of belonging to a scheduled caste/tribe, by adopting the procedure under the Act of 2000. Needless to say that this is in consonance with the mandate of Sec.6(2) of the Act of 2000, which mandates that any person desirous of availing the benefit of concessions provided

to the Scheduled Castes/Tribes etc. may make an application to the Caste Scrutiny Committee for verification of such claim and issuance of a validity Certificate. This is more so in consonance with the mandate of Sec.4(2) of the Act of 2000, which mandates that the Caste Certificate issued by the Competent Authority shall be valid only subject to the verification and grant of validity certificate by the Scrutiny Committee. Thus when the Caste/Tribe certificate issued by the Competent Authority u/s 4(1) of the Act of 2000, is subject to a validity certificate to be issued by the Scrutiny Committee u/s 6 of the Act of 2000, and a person secures public employment on the basis of such caste/tribe certificate, the obligation to subject it to verification to the Scrutiny Committee and to get a validity in regards to the same, and to submit it to the employer is of such employee, without which such employee cannot claim to be entitled to be continued to receive the benefits of such employment. This would be irrespective of who the employer is, as such an obligation is inbuilt in the Statute itself in terms of Sec.4(2) of the Act of 2000. Thus every person who is granted a caste/tribe certificate u/s 4(1) of the Act of 2000, is under an obligation to obtain a validity in regard to the same from the Scrutiny Committee, in view of the statutory obligation as spelt out by Sec.4(2) r/w Sec.6(2) of the Act of 2000, in case such person is desirous of availing the benefits of concessions as provided to the reserved scheduled category. Failure to do so, would clearly disentitle such person from any

benefits of concessions and in case they have been availed then to their return in terms of the mandate of Sec.10 of the Act of 2000, for having done so, a person who was genuinely entitled to such concessions, stands deprived of them. The plea of legislative incompetency vis-à-vis Sec.6(3) of the Act of 2000, is therefore also rejected.

34. A person securing employment in a public service, cannot be heard to say that his claim of belonging to a particular reserved category ought not to be tested and should be accepted as submitted, for that would be denial of a legitimate claim of a genuine person, who would be entitled to such employment, in case on scrutiny the claim of a person is found to be invalid.

35. We are of the considered opinion that in view of judgments cited above, there is no unconstitutionality either in section 6(1) or 6(3) of the Act of 2000 and rule 9 of the Rules, 2003. The State Act i.e. Act of 2000 is enacted in view of judgment in **Kumari Madhuri Patil** (*supra*). The legislation essentially take care of that concern and provide statutory framework to regulate the issuance of caste certificate, scrutiny, verification of claims and the consequences to ensue upon the verification of a claim. The legislation received assent of the President as discussed above and then it was published in the Gazette. If the employees of Central Government are deriving benefits meant for reserve category on the basis of reservation in the concerned State then there is no violation or

unconstitutionality in asking such employee to get his/her caste validated. It can be seen that if caste certificate is issued in favour of an employee of Central Government, it is for everybody in his family, his children, grand children, so on and so forth, they will get the validity certificate without verification of the Scrutiny Committee, if contention of the petitioners is accepted. Such is not the import and object of the enactment. If such certificates without verification are held as valid, the blood relatives of the employees of Central Government will get automatic benefits, it may be used for admission in educational institutions, public employment and even for election. Thus, in our considered opinion, there is no unconstitutionality and the provisions of section 6(1) and 6(3) of the Act of 2000 and Rule 9 of the Rules, 2003 are held and declared to be valid and constitutional. In view of Seventh Schedule, List III Entry 20 read with Preamble Fundamental rights and Directive Principles of Constitution of India, State is competent to pass legislation governing Central Government employees as they derive benefits of reservation and caste certificate issued by State Authorities. In fact, it is a duty of the Court to see that constitutional goals set down are achieved. Therefore, the prayer in this regard stands rejected.

36. Stand over to **17/12/2025** at **02.30 pm.** for further consideration.

(RAJ D. WAKODE, J) **(SMT.M.S.JAWALKAR, J)**