

**B.P.DAS, J & B.K.NAYAK, J.**

W.P.(C) NO.10649 OF 2009(30.04.2010)

**LOCHAN MAJHI** .....Petitioner

.Vrs.

**STATE OF ORISSA & ORS** .....Opp.Parties

**CONSTITUTION OF INDIA, 1950 – ART.342.**

For Petitioner – M/s. Gautam Mukharji, P.Mukharji, A.C.Panda,  
B.Panigrahi & S.Mukharji.

For Opp.Parties – Government Advocate.

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**B.K.NAYAK, J.** In this writ application, the petitioner-Lochan Majhi has challenged the final order dated 30.06.2009 (Annexure-8) passed by the State Level Scrutiny Committee directing for cancellation of the caste certificate issued in favour of the petitioner describing him as Scheduled Tribe and for his removal from Government service and the consequential order dated 28.07.2009 (Annexure-9) passed by the Executive Engineer, Lower Suktel Dam Division, Bolangir terminating the service of the petitioner.

2. In pursuance of direction of the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others;** AIR 1995 SC 94, the State Government has constituted the State Level Scrutiny Committee for making enquiry into allegations of fraudulent social status certificate and to pass appropriate orders thereon, so also the District Level Vigilance Cell to investigate into social status claim of persons. The Zilla Adivasi Sangha in the district of Bolangir alleged against a number of persons, who have obtained false and fraudulent Scheduled Tribe Certificates and are thereby gaining advantage by way of reservation in the matter of public employment and admission in the educational institutions to the detriment of the real tribal persons. The petitioner-Lochan Majhi and his three daughters, namely, Renuka, Sasmita and Rasmita and his son, Sujit are some of the persons alleged to have acquired fake and fraudulent Scheduled Tribe caste certificates. Admittedly, the petitioner-Lochan Majhi has been able to obtain two caste certificates describing him as a Scheduled Tribe of 'Gond' community. At two different points of time from two different authorities he obtained the caste certificates, i.e., from the S.D.O., Titilagarh in the year 1979 in Revenue Misc. Case No.27/175/1979 and the second one from the Tahasildar, Kantabanji in the year 2005 in Revenue Misc. Case No.2295 of 2005. On the basis of the Scheduled Tribe certificate obtained by him, he got employment as a Peon in the reserved quota meant for Scheduled Tribe in the Irrigation Department in the year 1982. His eldest daughter-Renuka Majhi, by virtue of the Scheduled Tribe certificate obtained by her, got appointment as a Junior Clerk in the office of the District Judge, Bolangir. On the complaint received against the petitioner and his children, the State Level Scrutiny Committee initiated Case Nos.5 of 2009 to 9 of 2009 against them and referred the matter to the District Vigilance Cell, Bolangir for the purpose of investigation.

3. The matter was enquired into by the Inspector of Police, Sonapur, who had been deputed to the Vigilance Cell, Bolangir. During enquiry, the Inspector of Police contacted the petitioner, who stated that he is the son of late Dhansai Majhi of village-Rengali,

P.S.Kantabanji, Dist-Bolangir and that he read upto matriculation without passing the same and has married one Padmabati Majhi and has got three daughters and one son and he is posted as Peon in the office of the Executive Engineer, Lower Suktel Dam Division, Bolangir since 1982. He claimed that he belongs to Gond caste, which is a Scheduled Tribe community in the State of Orissa. He started his schooling in Chaulsukha Sevashram (Primary School) and then in Deshil Ashram School of Tureikela Block. He denied the allegation that he was the natural born son of Markand Meher of village-Chaulsukha. In course of his local enquiry, the Inspector of Police of the Vigilance Cell in village-Rengali examined Lalita Majhi (65), wife of late Dhansai Majhi of village-Rengali, who stated that her husband had first married to one Chanchala Majhi, who died living behind a seven month old girl child, namely, Parbati Majhi. Thereafter, she (Lalita) married Dhansai Majhi about 50 years back, stayed in her husband's house, brought up Parbati and arranged her marriage. Lalita herself gave birth to a female child, namely, Ainla Majhi. Except these two daughters born through two wives, Dhansai Majhi has no other son or daughter nor has he taken any son on adoption. Lalita is still staying in the house of her husband, late Dhansai Majhi and possessing his landed properties. Of late, she came to know that Lochan Meher of village-Chaulsukha has claimed to be the son of her husband-Dhansai, even though she has not seen any Lochan Majhi during the funeral ceremony of her late husband or during the marriage ceremony of her daughter. Lalita further stated that a few months back the petitioner came to her house and identified himself as the son of Dhansai Majhi and offered Rs.200/- and one saree and induced her to recognise him as the son of Dhansai Majhi but she denied. During local enquiry, it was further found that Lochan Majhi and Lochan Meher are one and the same person who is the natural born son of Markand Meher and Smt. Sukrubar Meher of village-Chaulsukha under Kantabanji Police Station having sub-caste 'Bhulia' which is of O.B.C. category.

The I.O. also verified the Admission Register of Chaulsukha Sevashram (Primary School) for the year 1958-1974 in presence of the School Headmaster and Sri Abhimanyu Behera, O.A.S., D.W.O., Bolangir. The admission register revealed that Lochan Majhi was admitted in Class-I in Chaulsukha Sevashram on 20.01.1966 and the original entries in the register were tampered with and re-written by inserting words with different flows and shade of writings as to the name of the student which was initially written as Lochan Meher and subsequently the word 'Meher' had been scored through and over it 'Majhi' had been written with deep shades. Against the column, 'native place', over the mark 'ditto' for Chaulsukha, the word 'Rengali' has been written. Similarly, the original caste 'Bhulia' has been changed to 'Gond'. Under the column, 'guardian's name' the entry 'Markand Meher' has been cut and there over 'Dhansai Majhi' has been written. The original signature of the parent/guardian was 'Markand Meher' which had been scored through and there over one thumb impression had been affixed with writing "Sri Dhansai Majhinka Tipa" in oriya language. It was also found that in the dress distribution register for class-II students of the said primary school, the name of the student was 'Lochan Meher' vide Sl.No.14 with regard to supply of dresses on 07.04.1967. The distribution register of books revealed that Welfare Extension Officer (WEO) of Tureikela Block had endorsed on 21.8.1969 that a complaint arises that Lochan Majhi is not a S.T. student and he is 'Meher' by caste.

During local enquiry by the I.O. in village-Chaulsukha one Purna Ch. Bhoi of the same village stated that he knew Lochan Meher, who is the son of Markand Meher of the same village and the said Lochan Meher married Padmabati Meher of village-Belpada, Dist-Bolangir as per the custom of Bhulia caste and that he himself performed the Puja before the village deity on the eve of Baranugamana (Barat) of Lochan Meher. He pleaded ignorance if Dhansai Majhi of village-Rengali adopted Lochan Majhi as his

son. One Makunda Meher of village-Chaulsukha also stated that Lochan Meher, who is son of Markand Meher of his village, belonged to Bhulia caste and that Lochan also married in Bhulia society.

In the caste certificate issued in favour of Lochan Majhi by the Tahasildar, Kantabanji in the year 2005, his fathers name is shown as Dhansai Majhi of village-Rengali belonging to 'Gond' caste of S.T. community. But in the caste certificate issued in favour of the petitioner in the year 1979 by the Sub-Collector, Titilagarh, his father's name has been described as 'Dhansingh Majhi, but not 'Dhansai Majhi. The enquiry further revealed that the petitioner was physically staying with his natural father-Markand Meher in his house in village-Chaulsukha and never stayed in the house of Dhansai Majhi nor followed the caste customs, traditions and rituals of Gond community in any manner. It was also learnt that 'Dhanasai Majhi' and 'Dhansingh Majhi' were two biological brothers.

10. The I.O. of the District Vigilance Committee, therefore, concluded that the petitioner is the natural born son of Markand Meher of village-Chaulsukha and by manipulating and tampering the school admission register of Chaulsukha Sevashram his identity is sought to be changed describing him as the son of Dhansai Majhi of village-Rengali, who belonged to Gond Tribe, which is a scheduled tribe, and on that basis he obtained fake and fraudulent caste certificate and secured public employment against reserved vacancy meant for scheduled tribe. The children of the petitioner have also accordingly obtained false and fraudulent caste certificates.

11. The report of the Inspector of Police of Vigilance Cell was sent to the State Level Scrutiny Committee, which on its turn sent copies of the report to the petitioner and the other candidates (children) along with show cause notice dated 4.3.2009 asking them to file their show cause reply in support of their claim within 15 days from the date of receipt indicating further if the petitioner would desire to be heard in person.

12. On receipt of notice, the petitioner Lochan Majhi submitted his show cause reply dated 23.3.2009 (Annexure-5) stating that his father's name is Dhansai Majhi and he is the permanent resident of Rengali and he belonged to Gond community which is a Scheduled Tribe. It is stated by him that he had no connection with Markand Meher of village- Chaulsukha. He admitted that he was admitted in the Chaulsukha Sevashram School on 20.01.1966 when he was about five years old. In the school register, he has been described as Lochan Majhi, S/o. Dhansai Majhi of village-Rengali. He left the said school in the year 1969 and was admitted in Deshil Ashram School where also his name has been mentioned as Lochan Majhi, S/o. Dhansai Majhi. It is also stated that in the transfer certificate granted by the Government High School, Malpada, Bolangir in the year 1979, he has been described as Lochan Majhi, S/o. Dhansai Majhi. It is also stated that after the death of Dhansai Majhi, the petitioner has been paying the rental in respect of Holding No.21 of Mouja-Rangali which was the property of Dhansai. In the voters identity card, he has also been described as the son of Dhansai Majhi. In his service records, he is also so described. He has also stated that there was no tampering in the school admission register and that he could not have tampered the same at the age of five years. Imputing that the enquiry report submitted by the District Vigilance Cell was false, the petitioner lastly desired to be heard in person and to be permitted to engage a lawyer.

13. The final order dated 30.06.2009 (Annexure-8) passed by the State Level Scrutiny Committee reveals that after receipt of the show cause reply of the petitioner and those of his children, notices were sent to them directing to appear on 14.5.2009 for personal hearing. The petitioner did not appear on the date fixed and has, however, disputed the fact of issuance of notice for personal hearing and contended that he has not received

any such notice. In pursuance of the direction given in **Kumari Madhuri Patil's** case (supra), a copy of the claim of the petitioner (show cause reply) was sent to the D.W.O., Bolangir to be published in the locality by beat of drums, inviting objections from any person or association against the claim. The notice was published by the DWO, Bolangir on 03.06.2009 by beat of drums inviting objections to the claim. Two numbers of objections were received within the stipulated period. The State Level Scrutiny Committee after going through the report of the I.O. of the Vigilance Cell, the show cause reply of the candidates, the objections received within the due date and the other relevant records unanimously came to the conclusion that the petitioner does not belong to Scheduled Tribe of Gond community and that he obtained fake and fraudulent social status certificate (Scheduled Tribe certificate) and took unfair advantage of the same in securing his employment in public service. The State Level Scrutiny Committee, therefore, directed for cancellation of the caste certificate of the petitioner and those of his children and for termination of the service of the petitioner which was secured as a Scheduled Tribe reserve candidate by utilising fake and fraudulent caste certificate.

14. In assailing the impugned order (Annexure-8) passed by the State Level Scrutiny Committee, the learned counsel for the petitioner vehemently urges that procedure prescribed by the Hon'ble Apex Court in **Kumari Madhuri Patil's** case (supra) for the purpose of issuance of social status certificate and the inquiry into the genuineness of such certificate, as laid down in paragraph-12 of the said judgment, have not been followed in the present case as a result of which the order passed by the Scrutiny Committee is totally vitiated, particularly when the investigation into the allegation of fake caste certificate of the petitioner was conducted by an Officer of the District Vigilance Cell, who was on deputation from another District and had no expertise in investigating social status claim. It is his further contention that the impugned order has been passed in violation of the principle of natural justice inasmuch as though the petitioner in his show cause submitted to the State Level Scrutiny Committee requested for personal hearing, no further notice was sent to him fixing any date of hearing, as a result of which the petitioner was deprived of opportunity to substantiate his claim with regard to his status as a Scheduled Tribe. It is also stated that assuming that any notice of personal hearing was sent to the petitioner, the same was not received by the petitioner and that the notice was also bad as public objection was invited after the purported date fixed for hearing the petitioner. It is the further contention of the learned counsel for the petitioner that two objections were received by the Scrutiny Committee pursuant to publication of notice in the locality, but those objectors were not given any opportunity to lead evidence. Lastly, the learned counsel alternatively urges that in the event this court finds no fault in the findings of the Scrutiny Committee as contained in the impugned order, following the principles laid down by the Hon'ble Apex Court in the case of **State of Maharashtra v. Milind and others**; AIR 2001 SC 393 no adverse order should be passed against the petitioner, as he had obtained the caste certificate a long time back and has already been in Government service for more than twenty five years.

15. A counter affidavit has been filed on behalf of the State refuting the contentions raised on behalf of the petitioner. It is stated in the counter affidavit that the procedure as laid down by the Hon'ble Apex Court in **Kumari Madhuri Patil's** case (supra) has been scrupulously followed in the inquiry into the social status of the petitioner and, therefore, the impugned order passed by the State Level Scrutiny Committee cannot be faulted. It is specifically stated that as per the direction of the Hon'ble Apex Court in **Kumari Madhuri Patil's** case, the State Government have constituted District Level Vigilance Cell in each district as per the Government

Resolution under Annexure-B/1 and all the officers of Vigilance Cell have been imparted training by experts for the purpose of investigating into the social status of Scheduled Castes and Scheduled Tribes including their customs, rituals etc. It is also stated that after receipt of the show cause reply of the petitioner in support of his claim, a further notice was issued to him vide Annexure-E/1 by speed post requesting him to appear before the Scrutiny Committee on 14.05.2009 at 11.00 A.M. and adduce evidence in support of his social status claim but the petitioner did not appear on the date fixed and, therefore, it cannot be said that the petitioner was not given opportunity of hearing. It appears from the counter affidavit that after publication of notice in the locality along with the copy of the enquiry report of the Vigilance Cell and the show cause reply of the petitioner inviting objections, two objections were received within the stipulated period which were considered by the Scrutiny Committee along with the report of the I.O. of the Vigilance Cell and the show cause reply of the petitioner. It is contended on behalf of the State during argument that since the petitioner did not appear for his personal hearing, though he was given opportunity by issuance of notice to him, it was not necessary to issue him a further notice after receipt of two objections from the locality. In reply to the last alternative submission made on behalf of the petitioner, it is contended by the learned Advocate General that **Milind's** case (supra), which has been relied upon by the learned counsel for the petitioner, does not lay down any law that as a matter of principle a person, who has obtained false and fraudulent caste certificate and thereby gained advantage by securing public employment against reserved vacancy depriving reserved candidates of their constitutional right, shall be protected merely because he has rendered service in a post for long years. On the contrary, placing reliance on the judgment of the Apex Court in the case of **Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others**; (2008) 13 SCC 170 it is contended that equity, sympathy and generosity have no place where the original appointment rests on false caste certificate even though the person concerned has rendered service for a long period inasmuch as the selection of the employee having been made on falsity and deception cannot be saved by equitable consideration.

16. Having regard to the contention raised by the parties, it is apposite to note the procedure prescribed by the Hon'ble Apex Court in **Kumari Madhuri Patil's** case (supra) for the purpose of scrutiny and enquiry into doubtful social status claims or complaints regarding genuineness of caste certificates.

The relevant subparagraphs of Paragraph no.12 of the said judgment are quoted below :

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4) All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(5) Each Directorate should constitute a vigilance cell consisting a Senior Deputy Superintendent of police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he

originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

(1) The Director concerned, on receipt of the report from the Vigilance Officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

(9) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the cast Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate, the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

(11) The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

(15) As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post. xxx    xxx    xxx "

17. While holding in sub-para (11) of Paragraph-12 of the judgment in **Kumari Madhuri Patil's** case (supra) that the order passed by the Scrutiny Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution, the Apex Court in paragraph-14 of the said judgment stated the nature of and the extent to which the High Court can exercise its power of judicial review as under :

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High Court is not a Court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts.”

18. With regard to the contention raised on behalf of the petitioner that in passing the impugned order the State Level Scrutiny Committee violated the principles of natural justice, it is to be seen in the light of the procedure prescribed by the Apex Court in **Kumari Madhuri Patil's** case (supra) whether after submission of his show cause reply the petitioner- Lochan Majhi was given notice and adequate opportunity of hearing, and whether calling the objectors, who submitted objections pursuant to publication of notice in the locality to lead evidence was required in the facts and circumstances of the case. Although, the petitioner claimed that no notice was issued to him after he submitted his show cause reply to the Scrutiny Committee for leading evidence with regard to his claim of Scheduled Tribe status, the opposite parties have taken a stand that notice was issued to the petitioner by speed post requesting him to appear before the Scrutiny Committee on 14.05.2009 at 11.00 A.M. and adduce evidence in support of his social status claim, but the petitioner did not appear on the date fixed. Copy of such notice has been annexed as Annexure-E/1. In order to verify the truth of such assertion, we had called for the records. In course of hearing, the learned Advocate General produced the records on 02.03.2010 and on verification it was found that in fact notice had been sent to the petitioner by speed post on 05.05.2009 asking him to appear before the Scrutiny Committee on 14.05.2009 at 11.00 A.M. and adduce evidence in support of his claim. There is no reason as to why the presumption of 'due service' in respect of registered post shall not apply to a notice properly addressed and issued by speed post. We are, therefore, unable to accept the contention of the petitioner that no notice was issued and no opportunity of hearing was given to him by the Scrutiny Committee.

Regarding the contention that the objectors of the two objections submitted in pursuance of publication of notice in the locality were not given opportunity to adduce evidence, it is necessary to see the nature of the two objections, copies where of have been annexed by the petitioner as Annexure-7 and 7/A. Objection under Annexure-7 has been signed by five persons claiming to be residents of village-Rengali and it is stated therein that Sri Lochan Majhi (petitioner) had been staying in the house of Dhansai Majhi since his childhood and was studying in Chaulsukha Sevashram and thereafter in the Desil Ashram School and Malpada High School and that in view of his service he is

staying at Bolangir with his family and that he comes to the village during village festivals. Similarly, the objection under Annexure-7/A was sent by one Bramahananda Tripathy of village-Kasamal, P.S.Kantabanji in which the objector has stated that village-Rengali is a neighbouring village and that Sri Lochan Majhi (petitioner) used to stay in the house of Dhansai Majhi of Rengali from his childhood and was studying in Chaulsukha Sevashram and that he has been staying at Bolangir with his family ever since he got Government service. It is seen that the tenor and contents of both the objections are similar. They do not contain anything adverse to the petitioner's claim, though there is no mention at all whether the petitioner is the natural born son of Dhansai Majhi or he is in any other manner treated to be his son. It is not known under what circumstances the copies of these two objections came to the possession of the petitioner. Be that as it may, since the two objections were not adverse in any manner to the claim of the petitioner, in our view, it was not necessary to call the objectors to lead any further evidence and to provide the petitioner an opportunity to cross-examine them. We are, therefore, constrained to hold that there was no violation of principles of natural justice in passing of the impugned order by the Scrutiny Committee.

19. Admittedly enquiry by Bolangir District Vigilance Cell was conducted by an Officer, who was deputed from Sonapur District. It is the contention of the petitioner that a Deputationist Officer was not competent to make the enquiry and further that he had no expertise to enquire into the anthropological and ethnological traits including the customs traditions etc. of different communities. The State on the other hand has taken a specific plea that all the Officers of Vigilance cells have been imparted orientation training by experts of Scheduled Caste and Scheduled Tribes with regard to the status of such communities, their deity, rituals, customs and different ceremonies etc. There is no legal bar for an officer of one District to be deputed to another neighbouring District Vigilance Cell and the learned counsel for the petitioner has not brought to our notice any such law. In view of the stand taken by the State, it is not open to the petitioner to challenge the competency of the deputed officer to make an enquiry when the enquiry in the present case involved more of local enquiry than enquiry into the anthropological and ethnological traits of the petitioner and in the given case this is so because at no stage the petitioner has claimed to be the natural born son of Dhansai Majhi nor there is any claim that he was the adopted son of Dhansai Majhi. His only claim as revealed from his show cause reply is that he is son of Dhansai Majhi and has been so described in the school admission register. The petitioner gives more emphasis on the school admission register as to his identity. When the very paternity of the petitioner in this case was in dispute, it was incumbent upon him to specify whether he was the natural born son or adopted son of Dhansai Majhi. It was also incumbent upon him to state specifically the name of his biological mother, which he has not done. This was more so particularly when the school admission register of Chaulsukha Sevashram (Primary School), where initially the petitioner was admitted, has been found to have been tampered with respect to every entry relating to the petitioner such as his surname, father's name, village, caste, etc. The fact that initially the petitioner was admitted as Lochan Meher, son of Markand Meher of village- Chaulsukha belonging to caste 'Bhulia', which was subsequently changed as Lochan Majhi, S/o. Dhansai Majhi of village-Rengali belonging to caste 'Gond', necessitated proper explanation from the petitioner as to such changes. The subsequent transfer certificate issued by Chaulsukha Sevashram is based on the fraudulently tampered entries in the admission register. The subsequent admission of the petitioner in another school on the basis of such transfer certificate is therefore of no consequence. In view of such tampering of the primary school admission register coupled with the statement of villagers including that of Lalita Majhi, whose status as the widow of Dhansai Majhi has not been challenged or disputed by any body, the



inescapable conclusion is that the petitioner is not the son of Dhansai Majhi and on the other hand is the natural born son of Markand Meher as has been found by the Scrutiny Committee. The caste certificate obtained by the petitioner having been issued mainly on the basis of school transfer certificate was definitely fake and fraudulent one as found by the State Level Scrutiny Committee.

20. In view of the aforesaid analysis, we find no infraction of the procedure prescribed by the Apex Court in **Kumari Madhuri Patil's** case (supra) by the State Level Scrutiny Committee in the matter of enquiry into the social status of the petitioner and, therefore, the impugned order under Annexure-8 does not suffer from any infirmity.

21. As to the alternative submission that the petitioner having been in service for more than 25 years on the basis of the Scheduled Tribe certificate his service be protected the learned counsel has placed reliance on the judgment of the Apex Court in **State of Maharashtra v. Milind and others**; AIR 2001 SC 393 and that of the Bombay High Court in **Prashant S/o. Haribhau Khawas v. State of Maharashtra and others** in Writ Petition No.3980 of 2006 and other connected writ petitions, decided on 25.01.2008.

In **Milind's** case (supra) the Constitution Bench of the Apex Court was considering the admission of the respondent to the medical course for the year 1985-86 as a Scheduled Tribe on the basis of caste certificate obtained by him describing him as belonging to the 'Halba/Halbi' Tribe under Entry-19 of the Constitution (Scheduled Tribes) order, 1950, though the respondent in fact belonged to 'Halba Koshti' caste. The respondent therein had obtained the Scheduled Tribe certificate on the basis that Halbi Koshti caste was a sub-tribe within the meaning of Entry-19 of the Scheduled Tribe of the State of Maharashtra, even though it was not specifically mentioned as such. Subsequently, the Director of Social Welfare and the Additional Tribal Commissioner having invalidated the caste certificate of respondent-Milind, he had filed Writ Petition No.2994 of 1984 before the High Court which was allowed holding that it was permissible to enquire whether any sub-division of a tribe was part and parcel of the Tribe mentioned in the Constitution (Scheduled Tribe) Order and that 'Halba/Koshti' is a sub-division of the main Tribe 'Halba/Halbi' as per the Scheduled Tribe Order. During the time the respondent obtained the caste certificate, the view of the Apex Court in the cases of **Bhaiya Ram Munda v. Anirudh Patara**, AIR 1971 SC 2533 and **Dina v. Narayan Singh**, (1968) 38 ELR 212 to the effect that evidence is admissible for the purpose of showing what an entry for the Presidential Order was intended to be was holding the field and, therefore, Bombay High Court relied upon the said view and allowed the respondent's writ petition. The State of Maharashtra challenged the judgment of the Bombay High Court and the Constitution Bench of the Apex Court allowed the appeal of the State of Maharashtra and set aside the High Court judgment. But, having regard to the fact that 15 years had passed and the respondent had completed the medical course for which huge amount was spent and that it would be to the benefit of the no body if the admission of the respondent to the medical course was annulled but on the contrary it may lead to depriving the service of a doctor to the society, the Apex Court observed that their judgment would not affect the medical degree obtained by the respondent. However, it made clear that the respondent could not take advantage of the Scheduled Tribes Order any further. The Apex Court further observed that having regard to the passage of time, in the given circumstances, including interim order passed in SLP (C) No.16372 of 1985 and other related matters, the admission and appointment that have become final shall remain unaffected by the judgment.

The Constitution Bench, while dealing with **Milind's** case (supra) made the aforesaid observation being aware of the fact that a larger number of candidates, who had obtained caste certificates on the basis of evidence being led that a particular sub-caste or sub-Tribe belonged to the particular caste or Tribe in the Entries made in the Presidential Orders and that they might be affected by the judgment.

In **Prashant's** case (supra) the Bombay High Court protected the appointments of persons belonging to 'Koshti' sub caste who had obtained the caste certificates as Scheduled Tribe 'Halba/Halbi', keeping in view the observation of the Apex Court in Milind's case.

The aforesaid two decisions, however, do not lay down any general principle that rendering long period of service, appointment to which was obtained by means of fake and fraudulent caste certificate, should be protected.

22. On the contrary, in the case of **State of Maharashtra v. Ravi Prakash Babulalsing Parmar**, (2007) 1 SCC 80 dealing with a similar situation, the Apex Court observed in paragraph-23 of the judgment thus:

"23. The makers of the Constitution laid emphasis on equality amongst citizens. The Constitution of India provides for protective discrimination and reservation so as to enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. When, therefore, a certificate is granted to a person who is not otherwise entitled thereto, it is entirely incorrect to contend that the State shall be helpless spectator in the matter."

23. In the case of **Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and others**, (2008) 13 SCC 170, the Apex Court held as follows :

"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."

24. In the case of **Union of India v. Dattatray S/o.Namdeo Mendhekar and others**; (2008) 4 SCC 612, the Hon'ble Apex Court set aside the judgment of the Bombay High Court whereby the High Court had granted protection to the services of the respondent, which had been procured on the basis of false caste certificate. Following the observation of the Supreme Court in **Milind's** case (supra) in paragraph-5 of the judgment, the Apex Court held as under :

" xxx xxx xxx xxx

But the said decision has no application to a case which does not relate to an admission to an educational institution, but relates to securing employment by wrongly claiming the benefit of reservation meant for Scheduled Tribes. When a person secures employment by making a false claim regarding caste/tribe, he deprives a legitimate candidate belonging to Scheduled Caste/Tribe, of employment. In such a situation, the proper course is to cancel the employment obtained on the basis of the false certificate so that the post may be filled up by a candidate who is entitled to the benefit of reservation.

xxx                      xxx                      xxx                      xxx”

25. In another similar case where the High Court relying on the observation in **Milind's** case, had protected the services of the respondent, who had already rendered twenty two years of service, the Hon'ble Supreme Court in the case of **Addl. General Manager, Human Resource, Bharat Heavy Electricals Ltd. v. Suresh Ramkrishna Burde**, (2007) 5 SCC 336 while setting aside the judgment of the High Court observed in paragraph-7 as follows :

“ xxx                      xxx                      xxx                      xxx

The High Court has granted relief to the respondent and has directed his reinstatement only on the basis of the Constitution Bench decision of this Court in **State of Maharashtra v. Milind**. In our opinion the said judgment does not lay down any such principle of law that where a person secures an appointment by producing a false caste certificate, his services can be protected and an order of reinstatement can be passed if he gives an undertaking that in future he and his family members shall not take any advantage of being member of a caste which is in reserved category.

xxx                      xxx                      xxx                      xxx”

26. In the light of the judicial pronouncements as seen above, the alternative submission of the learned counsel for the petitioner carries no force, in as much as the petitioner secured employment on the basis of a false and fraudulent caste certificate by depriving a genuine and deserving Scheduled Tribe candidate for whom the post was reserved. Accordingly, we find no merit in this writ application and we dismiss the same without any order as to costs.

Writ petition dismissed.