DESH RAJ

v.

BODH RAJ

NOVEMBER 30, 2007

[K.G. BALAKRISHNAN, CJ AND R.V. RAVEENDRAN, J.]

Representation of the People Act, 1951:

ss. 5 and 100(1)(a)—Election in State Assembly Constituency reserved for Scheduled castes—Election of returned of candidate challenged on the ground that he did not belong to Scheduled Caste—HELD: In view of ss. 5 and 100(1)(a) r/w Article 173 of the Constitution, if a candidate, who contests election from the Constituency reserved for Scheduled Castes, is shown in a proceeding challenging his election, as not belonging to a Scheduled Caste, his election is liable to be declared as void—On facts, from the oral and documentary evidence adduced by the election-petitioner, it has been established that the returned candidate did not belong to 'Lohar' Scheduled Caste as claimed by him, but was of 'Tarkhan' caste which was not a Scheduled Caste in the State and, as such, his election is declared to be void—Constitution of India, 1950—Article 173.

Evidence Act, 1872:

s. 72—Relevancy of entries in public record made in performance of duty—School admission and withdrawal registers, Pariwar Registers and Birth Register showing the caste of the candidate and his family—HELD: All these public records were produced by authorities of respective Government Institutions duly summoned and examined by court as PWs—Entries in these records in regard to age, caste etc. are considered as relevant and admissible—High Court erred in ignoring entries in these documents—Punjab Police Rules, 1934—rr. 22.45 and 22.66—Representation of the People At, 1951—ss. 5 and 100(1)(a).

A *s. 90—Presumption as to documents thirty years old—Application for admission given to Government Secondary School showing the caste of the candidate and his family—HELD: Documents are thirty years old and attract the presumption u/s 90—Punjab Police Rules, 1934—rr. 22.45 and 22.66—Representation of the People At, 1951—*
B *ss. 5 and 100(1)(a).*

Judicial Notice—Caste certificate issued by Executive Magistrate—HELD: Such caste certificates are not given after a thorough investigation—When school records show a particular caste, the caste certificates issued to the candidate and his relatives by
C *Executive Magistrate showing a different caste should be ignored—Social status certificates.*

The appellant and the respondent both, claiming themselves to be members of Scheduled Castes, contested election for Member
D **of Legislative Assembly from 35-Gangath (SC) Assembly Constituency in the State of Himachal Pradesh held on 26.2.2003, and the respondent having secured the highest number of votes was declared as elected. The appellant challenged the election of the respondent in an election petition before the High Court on the**
E **ground that he did not belong to 'Lohar' caste, as claimed by him through a caste certificate dated 16.12.1991 issued by the Executive Magistrate, but belonged to 'Tarkhan' Caste which was not a Scheduled Caste in the State. The respondent resisted the election petition on the ground that he was 'Lohar' which was a Scheduled**
F **Caste, and as such, was eligible and qualified to contest the election from the Constituency concerned. The High Court held that the election petitioner failed to prove that the returned candidate did not belong to Scheduled Caste (Lohar) and, as such, dismissed the election petition.**

G **In the instant appeal filed by the election petitioner under s.116-A of the Representation of the People Act, 1951, the question for consideration was: Whether the appellant-election petitioner proved that the respondent-returned candidate did not belong to 'Lohar' caste – a Scheduled Caste in the State of Himachal Pradesh?**

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Allowing the appeal, the Court A

HELD:1.1. In view of Sections 5 and 100(1)(a) of the Representation of the People Act, 1951 read with Article 173 of the Constitution of India, if a candidate who contests election from the constituency reserved for Scheduled Castes, representing himself as belonging to a Schedule Caste, is shown in a proceeding B challenging his election, as not belonging to a Schedule Caste of the State, his election is liable to be declared as void.

[Para 5] [764-D, E]

1.2. In the instant case, the oral evidence of the witnesses C examined by the appellant election-petitioner (PWs 7, 8, 9 and 10), who all belonged to the village to which the respondent-returned candidate belonged, clearly shows that they knew the respondent and his family well and that he belonged to 'Tarkhan' caste. Their cross-examination has not brought out anything significant to disbelieve their evidence. On the other hand, the evidence of the D witnesses of the respondent (RWs 1, 4, 6, 7, 8 and 11) has been to highlight the occupation of respondent and his relatives. They have all stated that because the respondent's family and relatives were doing the job of 'Lohars', they belong to the caste of 'Lohar'. In fact, the elder brother of the appellant in his examination-in-chief has E significantly stated that they and their relatives were 'Lohars' by occupation. The respondent was evasive in his evidence about his date of birth and particulars of his relatives in the village, to avoid being linked to the caste mentioned in the school records. The residents of a village have more familiarity with the 'caste' of a co- F villager, than his date of birth. Several villagers who knew the respondent and his father, including a cousin of the respondent have been examined and they have stated the caste of the respondent as 'Tarkhan'. [Para 13 and 20] [767-F, G; 768-A; 771-B, C]

2.1. The election petitioner also produced documentary G evidence, namely, Ext. PW-2/A (admission and withdrawal register of the Government Primary School), Ext. PW3/A (application form for admission given to Government Secondary School by father of the respondent), Ext. PW3/B (Admission Register of Government Middle School), Ext. PW 4/A, Ext. PW-4/B, Ext. PW-4/C (the Pariwar H

A Registers for the years 1976, 1977, 1982-89 and 1990 onwards respectively) and Ext. PW6/A (extract of Birth Register maintained by the Police Station). All these documents are the public records maintained as per Rules in the usual course of discharge of official functions. These records show the family of the respondent as of
B 'Tarkhan' Caste. In the Pariwar Register for the years 1976 to 1989 against the column 'whether scheduled caste or scheduled tribe', the entry was 'Tarkhan' which was struck off and substituted by the entry 'Lohar'. The correction was not attested. In the absence of any satisfactory explanation of the caste 'Tarkhan' being struck off and
C substituted by 'Lohar', the conclusion is that the corrections were all done subsequent to 1990 when respondent became the Up-Pradhan. [Para 14, 15, 16, 17, 19 and 24] [768-C, E, G; 770-D; 773-F, G; 775-C, F]

2.2. The High Court erred in rejecting all these documents as
D either not proved or not of any evidentiary value. It committed an error in ignoring the entries in these documents. It may be seen that all these Government records were produced by the authorities of the respective Government Institutions duly summoned and examined by the Court as PWs. Having regard to the provisions of
E Section 35 of the Evidence Act, 1872, entries in school admission registers in regard to age, caste etc., have always been considered as relevant and admissible. Besides, the entries in the School Registers were made nearly 40 years prior to filing of the election petition. Ext. PW-3/A being a document more than 30 years old attracts the presumption under Section 90 of the Evidence Act, 1872.
F It gives the caste as 'Tarkhan'. It has to be treated as clinching evidence. [Paras 19, 20, 23 and 24] [770-E; 771-D, E; 772-C, H]

Umesh Chandra v. *State of Rajasthan,* [1982] 2 SCC 202; *State of Punjab* v. *Mohinder Singh,* [2005] 3 SCC 702 and *Kumari Madhuri*
G *Patil* v. *Addl. Commissioner,* [1994] 6 SCC 241, relied on.

Birad Mal Singhvi v. *Anand Purohit,* AIR (1988) SC 1796, referred to.

3.1. The evidence let in by the appellant clearly establish that
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(a) the respondent was born in and is a resident of Motli village. His date of birth is 2.5.1956; (b) respondent is the fifth and the last child of his parents; (c) respondent was a student of government primary and middle schools, Motli; School Registers show the caste of the respondent as 'Takhan' on the basis of particulars furnished by his father; (d) in the birth register maintained in the jurisdictional Police Station as per the Punjab Police Rules, his date of birth was registered as 2.5.1956 and the caste of his parents was shown as 'Tarkhan'; and that (e) in the Pariwar Registers maintained by the Gram Sabha between 1976 and 1989, the caste of his family was shown as 'Tarkhan' and sometime thereafter it was struck off and shown as 'Lohar'. The evidence of the residents of respondent's village (PWs.7 to 10) support the same. There is nothing in the cross-examination of PWs.7 to 10 to disbelieve their statements that the respondent belonged to Tarkhan caste. However, even if the entire oral evidence is excluded, the documentary evidence produced by the appellant, clearly demonstrates that the respondent's father and his family members including the respondent had always held out to be and accepted as persons belonging to 'Tarkhan' caste. It was only after 1990, the respondent tried to show that he belonged to 'Lohar' caste. [Para 25] [775-B, C, D, E, F, G; 776-A]

3.2. In so far as the caste certificate Ex.RW-5/A issued by the Executive Magistrate and, relied on by the respondent, suffice it to say, such caste certificates are not given after a thorough investigation. When the caste of the respondent is in issue and when primary evidence regarding caste is led by the appellant, and the attempt of the respondent to claim to be a 'Lohar' from 1990 is evident, the caste certificate issued by the Executive Magistrate on 1.12.1991 cannot be taken as evidence to prove the caste of the respondent. It has been observed by this Court that when school records show a particular caste, the caste certificate issued to the candidate and his relatives by the Executive Magistrate showing a different caste should be ignored. [Para 26] [776-E, F, G]

Kumari Madhuri Patil v. *Addl. Commissioner,* [1994] 6 SCC 241, relied on.

A **4. The appellant-election petitioner has clearly established that the respondent and his family belong to 'Tarkhan' caste which is not a Scheduled Caste in the State of Himachal Pradesh. It is also clear that from around 1990, the respondent has made efforts to show his caste as 'Lohar', a Scheduled Caste. Consequently, the respondent** B **who did not belong to a Scheduled Caste was not qualified to be chosen to fill a seat in the Legislative Assembly reserved for Scheduled Castes. Therefore, the judgment of the High Court is set aside and the election of the respondent-returned candidate from 35-Gangath (SC) Assembly Constituency in the 2003 Election is** C **declared to be void. [Para 27 and 28] [777-A, B, C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4676 of 2005.

From the final Judgment and Order dated 7.6.2005 of the High Court D of Himachal Pradesh at Shimla in Election Petition No. 1/2003.

Mahabir Singh, Ajay Pal, Nikhil Jain, Gagan Deep Sharma, Preeti Singh and Dilbag Singh (for Sunil Kumar Jain) for the Appellant.

Anoop G. Choudhari, June Choudhari, J.S. Attri for the Resondent.

E The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, CJI. 1. This statutory appeal under section 116A of the Representation of People Act 1951, is filed by an Election Petition against the judgment dated 7.6.2005 of the Himachal F Pradesh High Court dismissing his Election Petition No.1 of 2003 challenging the election of the respondent (Bodh Raj) as Member of Legislative Assembly from 35-Gangath (SC) Assembly Constituency.

2. The case of the appellant in brief is that 35-Gangath Assembly Constituency is reserved for scheduled castes, that he and the respondent, G among others were candidates for election from the said constituency. In the said election held on 26.2.2003, the respondent secured the highest number of votes namely 24499 and was declared as elected. The respondent had in his nomination paper declared that he belongs to a scheduled caste (Lohar) and in support of his claim, had produced a caste

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certificate dated 16.12.1991 issued by the Executive Magistrate, Indora, District Kangra certifying that he belonged to scheduled caste of Lohar. Only a few days before the polling, the appellant learnt that respondent does not belong to Lohar caste but belongs to 'Tarkhan' caste which is not a scheduled caste in the State of Himachal Pradesh. According to Appellant, the respondent was disqualified to contest the election in the Assembly Constituency reserved for scheduled caste and therefore, the election of the respondent was void.

3. The respondent resisted the said election petition. In his written statement, he asserted that he belonged to Lohar caste (a Scheduled Caste) and was eligible and qualified to contest as a candidate for the reserved Assembly Constituency (35-Gangath). He also contended that he was not served a complete and attested copy of election petition and therefore, the petition was liable to be rejected.

4. Issues 1 to 3 framed by the High Court (relating to the respondent's contention that he was not served a complete and attested true copy of the election petition) were treated and tried as the preliminary issues and held against the respondent by order dated 26.9.2003. Thereafter, evidence was led in regard to the issues (4) to (6) which read thus:

(4) Whether the respondent is not a member of Lohar Caste (SC) and was not qualified on the date of his election to fill the seat in the Assembly, from reserved Constituency for SC?

(5) Whether nomination paper of respondent has wrongly and improperly been accepted?

(6) Relief

After appreciating the oral and documentary evidence, the learned Single Judge of the High Court by Judgment dated 7.6.2005 held that the appellant failed to prove that respondent did not belong to a schedule caste (Lohar) and was not qualified to contest the election to the assembly seat reserved for scheduled caste. As a consequence, he dismissed the petition. The said judgment is under challenge in this appeal.

5. It is not in dispute that a person who does not belong to a

A scheduled caste, cannot offer himself as a candidate for election to a reserved constituency. Article 173 of the Constitution prescribes the qualification for membership of the State Legislature and provides that a person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he is a citizen of India, not less than 25 years of age, and B possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Section 5 of the Representation of People Act, 1951 ('Act' for short) made by the Parliament prescribes the qualification for membership of a Legislative Assembly. It provides that a person shall not be qualified to be chosen to fill a seat in the C Legislative Assembly of a State, reserved for the scheduled castes of that State, unless he is a member of any of those scheduled castes and he is an elector for any Assembly Constituency in that State. Section 100 of the Act enumerates the grounds for declaring an election to be void. Clause (a) of sub-section (1) thereof provides that if the High Court is of D the opinion that on the date of his election, a return candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or under the Act, the High Court shall declare the election of the returned candidate to be void. Thus, if a candidate who contests the election, representing himself by belonging to a schedule caste, is E shown in a proceeding contesting his election, as not belonging to a schedule caste of the state, his election is liable to be declared as void. Therefore, the only question that arises for our consideration is whether the appellant had proved that the respondent does not belong to 'Lohar Caste' - a scheduled caste of the State of Himachal Pradesh.

F 6. The appellant had let in oral evidence by examining some residents of the respondent's village Mohtli - Jagdish Raj (PW7), Satpal (PW8), Joginder Singh (PW9) and Mohal Lal (PW10) to show that the respondent belonged to 'Tarkhan' caste. He also let in documentary evidence in the nature of school records (Ex.PW-2/A, Exs.PW-3/A and 3/B), birth G register extracts (Exs.PW-6/A, 6/B, and 6/C) and Pariwar Register maintained by the Gram Sabha (Exs.PW-4/A, 4/B, 4/C and 4/D) to show that the caste of respondent was 'Tarkhan' and that after 1990 respondent had attempted to represent that his caste as Lohar. We will first consider the oral evidence.

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7. Jagdish Raj (PW7) stated that the respondent's mother and his father were cousins, that he and respondent belong to Tarkhan caste and are residents of Mohtli village. According to him, the village has three Mohallas. About ten families of Tarkhan caste and those belonging to the Rajput caste reside in Jaildar Mohalla. Persons belonging to the scheduled castes of Chamar, Mahashay, Batwal and Bazigar reside in the Harijan Mohalla. Brahmins reside in the Brahmin Mohalla. He stated that no one belonging to 'Lohar' caste resided in the village. He also states that respondent's parents were Milkhi Ram and Giano Devi. He also gave the names of other Tarkhan families in the village who were the relatives of the respondent. His evidence was rejected by the High Court on the ground that the witness had admitted that his grandfather had worked as a Blacksmith and a person who worked as a blacksmith was called as a Lohar and a person who worked as Carpenter was called as Tarkhan and on the ground that he was not in a position to say the degree of relationship between his father and respondent's mother, when he claimed that they were cousins.

8. Satpal (PW8), another resident of Mohtli village, stated that respondent was a Tarkhan by caste, that he knew respondent's father Milkhi Ram as also his relatives who all belonged to Tarkhan caste and who were displaced persons who had come from Pakistan and settled in the village Mohtli. He also stated that Mohtli village is divided into three areas namely Brahman Abadi where Brahamins lived, Jaildar Mohalla where Tarkhan and Rajput families resided and a separate Mohalla where people belonging to scheduled castes - Chamar, Mahashay, Batwal and Bazigar resided and that there was no Lohar family in the village Mohtli. He also stated that except respondent, there was no other person known as Bodh Raj son of Milkhi Ram in the village Mohtli. The evidence of this witness was rejected by the High Court on the ground that the witness was able to state the number of issues of each son and daughter of Milkhi Ram.

9. Joginder Singh (PW9), another resident of Mohtli village, stated that respondent belonged to Tarkhan caste, that he also knew the respondent's father Milkhi Ram as also their relatives who all belonged to Tarkhan caste. He also stated that Milkhi Ram had five children namely

A three sons (Sat Pal, Yashh Pal and Bodh Raj) and two daughters (Satya Devi and Raj Rani) and the respondent was youngest among the five issues of Milkhi Ram. He also stated that Tarkhans and Rajputs reside in Jaildar Mohalla, that persons belonging to scheduled castes of Chamar, Bazigar, Batwal and Mahashay resided in a separate Mohalla, and Brahmins B resided in another separate Mohalla. The evidence of this witness was rejected on the ground that he was a sympathizer towards BJP party to which the appellant belonged and therefore, inimical towards respondent who belonged to Congress Party.

10. Mohan Lal (PW10) who is also a resident of the Mohtli, stated C that respondent belonged to Tarkhan caste and that there was no person other than respondent in the village who is known as Bodh Raj, son of Milkhi Ram and that no Lohar family resides in the Village Mohtli. His evidence was rejected by the High Court on the ground that he did not know respondent's father Milkhi Ram and had not stated the occupation D of the respondent's family members.

11. The appellant Desh Raj gave evidence as PW-11. He stated that respondent belonged to Tarkhan caste and was not qualified to contest the election for a seat reserved for scheduled castes. He stated that only E 4 to 5 days before the polling, he came to know from his workers that respondent belonged to a backward caste (BC) and not a scheduled caste. His evidence by the High Court was rejected as he had no person knowledge about the caste of the respondent.

12. We may also refer to the evidence of the respondent's witnesses F hailing from the village Mohtli. RW-1 Yash Pal, respondent's elder brother, examined as RW-1 stated that he and respondent are Lohars by occupation. He also stated that Basaba Ram and Nasib Chand who are related to him were also Lohars by 'occupation'. In his cross-examination, he stated that his father Milkhi Ram had five children (three sons and two G daughters), that the respondent was the youngest, that his grandfather's name was Gopi, that he and respondent studied in the village school, and that respondent was carrying on the business of scooter repairs. Tilak Raj examined as RW-4 stated that respondent, and his relations Khazana Ram and Basaba Ram were Lohar by caste as they were doing the job of H Lohars. Ved Prakash (RW-6) stated that respondent and his brothers as

also Basaba Ram and Khazana Ram worked as Lohars and were, therefore, belonged to Lohar caste. He admitted that he was elected as the Pradhan and respondent was elected as Up Pradhan of Mohtli Gram Panchayat in the year 1990 that both belonged to congress party. He also admitted that gram panchayat maintained a register known as Pariwar Register, that Pradhan of the gram panchayat was the overall custodian of all records and that the details of all families residing in the panchayat areas including names, age, address, caste etc., are recorded in the said register. He admitted that in the Ex.PW4/A, the Pariwar Register relating to the year 1976, the caste of respondent and his family had been shown as Tarkhan and that then corrected as 'Lohar'. Ram Singh (RW-7) stated that he knew respondent's father Milkhi Ram and his three sons including respondent were belonged to Lohar caste. He also stated that he had seen the members of the respondent's family working as Lohar and therefore, he stated that he belonged to the caste of Lohar. Bua Butta (RW-8) another resident of Mohtli village stated that he knew the respondent, that respondent was a Lohar by caste. According to him, because he used to get agricultural iron implements prepared and repaired by him, the respondent belonged to Lohar caste. He asserted that except respondent there is no other Bodh Raj, son of Milkhi Ram in the Mohtli village. Maggai Singh (RW-11) who is a resident of a neighbouring village of Surajpur stated that he used to get Lohar's job done from Milkhi Ram, Khazana Ram and Chaina Ram and that 'since they were working as Lohars, they were Lohars by caste. He also clarified that he had not enquired about their castes and that it is possible that respondent and his family may be Tarkhans.

13. What emerges from the aforesaid oral evidence is that while the witnesses examined by the appellant (PWs 7, 8, 9 and 10), who all belonging to Mohtli village to which respondent belonged, stated that they knew him and his family well and that he belonged to Tarkhan caste. The cross-examination of these witnesses (PWs 7, 8, 9 and 10) has not brought out anything significant to disbelieve their evidence. On the other hand, the evidence of the witnesses of respondent (RWs 1, 4, 6, 7, 8 and 11) has been to highlight the occupation of respondent and his relatives. They have all stated that because the respondent's family and relatives were doing the job of Lohars, they belong to the caste of 'Lohar'.

A In fact, the evidence of appellant's elder brother Yash Pal in his short examination-in-chief, extracted below, is significant :

> "I know the respondent. He is my brother. We are Lohars by occupation. Name of my father is Milkhi Ram. I know Basawa Ram and Nasib Chand also. They are related to me. They are also
B Lohars by occupation."

14. We will next consider the documentary evidence. Ex.PW-2/A is the admission and withdrawal Register of Government Primary School, Mohtli for the relevant period. Entry at Sl. No.1739 in the said Register
C shows that Bodh Raj, son of Milkhi Ram, Labourer (date of birth 2.5.1956; caste: Tarkhan) was admitted on 16.4.1962 to the First Standard and his name was struck off due to lack of attendance on 11.2.1964. There is another entry relating to Bodh Raj, son of Milkhi Ram of Mohtli village at Sl. No. 1959. This entry shows that Bodh Raj, son
D of Milkhi Ram (date of birth 2.5.1956, caste : Tarkhan) was admitted to the second standard. The portion of the sheet where the date of admission was noted is torn and it is however, evident from the other entries in the sheet that the admission for the second time was made in April, 1964. The entry also shows that he studied up to 5th standard and completed
E his education in the school on 31.3.1967.

15. Ex.PW-3/A is the application form for admission given to the government Secondary school by Milkhi Ram. It gives the name of the student as Bodh Raj, father's name as Milkhi Ram, date of birth as 2.5.1956 and the caste as Tarkhan. It contains the thumb mark of Milkhi
F Ram. Ex.PW-3/B is the Admission Register of Mohtli Government Middle School for the period 1962 to 1969. Entry No.778 relates to Bodh Raj son of Milkhi Ram, Mazdoor, caste Tarkhan. The admission was noted in a page at the top of which was the date 11.9.1967. As the next page starts with the date 4.4.1968, it is to be inferred that the admission to the
G middle school was in the year 1967-68.

16. Ex.PW-6/A is the extract of the Birth Register maintained by the Indora Police Station (page 376 entry no.27) whose limits include Mohtli village. Ex.PW-6/B is the true English translation of Ex. PW/6A
H which is in Urdu. Ex. PW6/C is the certificate of birth. They relate to the

birth of the fifth child of Milkhi Ram (son of Gopi Ram) and Smt. Giano, on 2.5.1956. The place of residence of the parents is shown as Mohtli and their caste is shown as Tarkhan. The name of the male child is shown as Bodh Ram. The registration was made on 16.5.1956, on the report of the Chowkidar.

17. Ex.PW-4/A, Ex.PW-4/B, Ex.PW-4/C and Ex.PW-4/D are the Pariwar Register of Mohtli Village for the years 1976, 1977, 1982-89 and 1990 onwards. The said register is maintained as required by the relevant rules relating to Gram Sabhas. In Ex.PW-4/A relating to the year 1976, the family of Yash Pal is shown as consisting of Yash Pal, his wife Prem Lata, daughter Guddi and brother Bodh Raj. Under the column 'whether scheduled caste or scheduled tribe', the caste is entered as 'Tarkhan', which is struck off and substituted by the word 'Lohar' without any attestation regarding correction. In Ex.PW-4/B is the pariwar register relating to the year 1977, the entry relating to Sat Pal and his family shows that his family consisted of himself, his wife Kamlesh, his brothers Yash Pal and Bodh Raj and his children Asha, Nirasha and Sushil Kumar. Under the column 'whether scheduled caste or scheduled tribe', the caste is entered as 'Tarkhan' which is struck off and substituted by the words 'Lohar' without any attestation regarding correction. In Ex.PW-4/C which is the Pariwar register for the year 1982-1989, the entry regarding the family of Sat Pal shows the family as consisting of himself, his wife Kamlesh, his children Asha, Nirasha and Sushil Kumar, his brother Yash Pal and his wife Prem Lata and child Guddi and another brother Bodh Raj. Here again, under the column 'whether scheduled caste or scheduled tribe', the entry is 'Tarkhan' which is struck off and substituted by the word 'Lohar' without any attestation regarding the correction. Ex.PW-4/D is the Pariwar register for the year 1990 onwards and in this register, the family of Bodh Raj is shows as consisting of himself, his wife Kunti Devi and children Rajiv Kumar and Pankaj Kumar and under the column 'whether scheduled caste or schedule tribe', the caste is shown as 'Lohar'.

18. The High Court has rejected all these documents as either not proved or not of any evidentiary value. We may now consider whether they were properly proved.

19. Ex.PW-2/A (admission and withdrawal register of the government

A primary school, Mohtli) was produced by PW-2 (Kamla Kumari) employed in the Government primary school, Mohtli, in response, summons issued to the said school to produce the said register. She also gave evidence regarding entries nos. 1739 and 1959 relating to Bodh Raj and gave the particulars entered in regard to Bodh Raj under the said B two entries. In her cross-examination, she stated that she has been posted in the said school for the last two years and that she had not made the said entries. The High Court has rejected the said School Register on the ground that the said register Ex.PW-2/A and the entries therein relating to Bodh Raj merely on the ground that PW-2 was not the author of the C entries and she has no personal knowledge about the entries. The High Court relied on the decision of this Court in *Birad Mal Singhvi* v. *Anand Purohit,* AIR (1988) SC 1796.

20. Section 35 of the Evidence Act provides that an entry in any public or other official book or register or record, stating a fact in issue D or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specifically enjoined by law of the country in which such book or register is kept, is itself a relevant fact. Having regard to the provisions of Section 35, entries in school admission registers in regard to age, caste etc., have always been E considered as relevant and admissible. [See : *Umesh Chandra* v. *State of Rajasthan,* [1982] 2 SCC 202 and *State of Punjab* v. *Mohinder Singh,* [2005] 3 SCC 702. In *Kumari Madhuri Patil* v. *Addl. Commissioner,* [1994] 6 SCC 241], this Court observed that caste is reflected in relevant entries in the public records or school or college F admission register at the relevant time and certificates are issued on its basis. In *Birad Mal Singhvi* (supra), this Court after referring to the ingredients of section 35 held thus :

> "An entry relating to date of birth made in the school register is relevant and admissible under section 35 of the Act, but the entry G regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded..... The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose H

information the dates of birth of the aforesaid candidates was mentioned in the school record, was examined. In the absence of the connecting evidence, the documents produced by the respondent, to prove the age of the aforesaid two candidates have no evidentiary value." A

This Court further held unless the parents, or persons conversant with their date of birth were examined, the entry in the school register by itself will not have much evidentiary value. In this case, we are concerned with the 'caste' and not the date of birth. The residents of a village have more familiarity with the 'caste' of a co-villager, than the date of birth of the co-villager. Several villagers who knew the respondent and their father, including a cousin of the respondent has been examined and they have stated the caste of the respondent. Appellant has also produced other documentary evidence which clinch the issue, namely the application made by the respondent's father for admission of respondent to school, birth register extract and village Pariwar Register extracts to establish the caste of the respondent. Further the said entries in the school register were made nearly forty years prior to the election petition. When read with other oral and documentary evidence, it cannot be said that Ex.PW-2/A has no evidentiary value even by applying the strict standards mentioned in *Birad Mal Sanghvi.* B C D E

21. We will next refer to Ex. PW3/A and Ex. PW3/B produced by PW-3 Smt. Indersh Bala, Principal of the Mohtli Senior Secondary School in response to a summons issued by the High Court. Ex. PW3A is application for admission submitted to the School by Milkhi Ram, father of Bodh Raj, registered as Sl.No.478. Ex.PW-3/B is the School Admission Register and entry 778 showed that Bodh Raj son of Milkhi Ram, caste Tarkhan, was admitted to Middle School and had passed 8th standard from the school. PW-3 stated that the particulars mentioned in the entry were that he was the son of Milkhi Ram, resident of village Mohtli and that his caste was Tarkhan. In her cross-examination, she stated that she was working in the said school for the last about one and half years and has no personal knowledge about the entries made therein. The High Court rejected both Ex.PW-3/A and PW-3/B on the ground that the date of Ex.PW-3/A was not clear and can be read as 22.4.1996 or 23.4.1968 F G H

A and neither of those dates correlated to Ex.PW-3/B as that showed that admission must have been made between 11.9.1967 and 4.4.1968. It is evident from Ex.PW-2/A that Bodh Raj left the primary school on 31.3.1967. The date on which the application for admission was registered was seen as '22.4.196__'. Only regarding the last figure in the 'year' the B court had a doubt whether it was '6' or '7' or '8' as that would make the year 1966, or 1967, or 1968. Merely because there was difficulty in reading one figure in the date cannot be a ground to refuse to accept Ex.PW-3/A. The said application submitted by Milkhi Ram, containing his thumb mark, being a document more than 30 years old attracts the C presumption under section 90 of evidence Act. As Ex.PW-3/A gives the caste as 'Tarkhan', it has to be treated as clinching evidence. Ex.PW-3/B which was also produced from proper custody in pursuance of summons issued from the court showed that Bodh Raj, son of Milkhi Ram, Tarkhan caste, belonging to Mohtli village studied upto 8th standard. Here again D it should be noticed that the evidence of the witnesses of both appellant and respondent is that there is only one Bodh Raj, son of Milkhi Ram in Mohtli village. Therefore, there was no justification to hold that there were some irreconcilable difference between Ex.PW-3/A and Ex.PW-3/B and rejected both the documents. Another reason given by the High Court to E reject the said evidence is that Ex.PW-3/B showed that the Bodh Raj had passed the 8th Standard and whereas he had stated in his cross examination that his qualification is under 'middle'. The High Court interpreted this as having failed in 8th standard, and considered the said statement as a contradiction and therefore, an additional ground for rejecting Ex.PW-3/B. The Respondent had been evasive in his evidence F about his date of birth and particulars of his relatives in the village, to avoid being linked to the caste mentioned in the school records. Therefore, his statement that he was under 'middle' was not a ground to reject the correction of Ex.PW-3/B. Insofar as the evidentiary value of Ex.PW-3/B, our observation with reference to Ex.PW-2/A equally apply to Ex.PW-G 3/B also.

22. We are of the view that the High Court committed an error in ignoring the entries in the admission and withdrawal registers of the government primary and middle schools, Mohtli (Ex. PW-2/A and Ex. H PW-3/B). We have already noticed the evidence (of PW8 and RW8)

that there is only one Bodh Raj, son of Milkhi Ram in the village of Mohtli. Respondent does not claim that there was any other Bodh Raj, son of Milkhi Ram in the village of Mohtli. Respondent, who was examined as RW-5, specifically admits that he studied in the Government primary school, Mohtli. He gives his age as 48 years in 2004 which corresponds with the age that is entered in the said register. When he was put a specific question about his date of birth that is 2.5.1956 (which was the date entered in the said registers), the respondent gave an evasive answer stating that he did not know whether his date of birth was 2.5.1956. What is significant is that he did not deny that his date of birth was 2.5.1956. In fact RW-9 examined by respondent admitted that date of birth of respondent is 2.5.1956. The admission of the respondent that he was born around 1956 and was a resident of Mohtli village and studied in the government primary school, Mohtli, when read with the School records, prove beyond doubt that the entries in Ex. PW2/A and Ex. PW3/B referred to above relating to Bodh Raj, son of Milkhi Ram of Mohtli village, Tarkhan caste, refers to respondent.

23. In response of summons issued by the High Court, PW-6 Naresh Sood working as Projectionist in the office of CMO, Dharmashala, brought the birth register and maintained by the Indora Police Station. The relevant entry relating to birth of the fifth child of Milkhi Ram and Giano of Mohtli village of Tarkhan caste on 2.5.1956 was marked as Ex.PW-6/A. An English translation of the Urdu extracts was Ex.PW-6/B, and the certificate as Ex.PW-6/C. The said register and the extract showed the name of the child as 'Bodhu Ram'. It also shows that the entry was made on 16.5.1956 on the information given by the, Chowkidar. The High Court rejected the said evidence merely on the ground that the name of the child was mentioned as 'Buddu Ram' and not as Bodh Raj. This again is a public record relating to births maintained as per Rules in the usual course of discharge of official functions. The Punjab Police Rules, 1934 (applicable to Himachal Pradesh) require maintenance of a Register of Births and Deaths at the Police Station (vide Rule 22.45 in Chapter XXII relating to Police Station. Rule 22.66 gives the manner of maintaining such Register. Clause (5) states that birth and death registers shall be retained at the Police Station for one year after the date of last entry and shall be sent to the Civil Surgeon for record. The Rule requires the village

A Watchman should diligently report births and deaths of his village diligently. Therefore the said birth records ought to have been accepted by the High Court. The High Court has rejected the Birth Extract and certificate as they relate to Buddu Ram and not Bodh Raj. It is quite possible that the person who gave information mentioned the name as Buddu Ram instead B of Bodh Raj or that the child was also known as Buddu Ram initially. But what is relevant is that fifth child of Milkhi Ram and Giano of Mohtli village who belonged to Tarkhan caste was born on 2.5.1956. It is nobody's case that Milkhi Ram and Giano of Mohtli village had some other fifth child born on 2.5.1956.

C

24. In pursuance of summons issued by the court, Chunni Lal, the Panchayat Secretary of Gram Panchayat, Mohtli (PW-4) produced the Pariwar register prepared and maintained as required under the Rules relating to Gram Sabhas. The pariwar registers for the years 1976, 1977, 1982 to 1989 and 1990 onwards were produced as Exs.PW-4/A, PW- D 4/B, PW-4/C and PW-4/D. In Ex.PW-4/A, Bodh Raj was shown as family member of elder brother Yash Pal. In Exs.PW-4/B and PW-4/C, he was shown as a family member of elder brother Sat Pal. In all these registers, the family was shown as of Tarkhan caste. Against the column 'whether scheduled caste or scheduled tribe', the entry was 'Tarkhan' which E was struck off and substituted by the entry Lohar. The correction was not attested. On the other hand, Ex.PW-4/D relating to the period of 1990 onwards showed the respondent himself as the head of his family and his caste as Lohar. RW-6, Ved Prakash, was the Pradhan of the Mohtli Gram Panchayat elected for two terms in 1985 and 1990. He also had admitted F that the gram Sabha was maintaining a pariwar register containing the details of all families residing in the panchayat area including their ages, occupations, castes etc. The suggestion put by respondent (RW-5) and Ved Prakash [RW6] (Pradhan during 1985-1995 and elected in 1990) was that when respondent became the Up-Pradhan of the Mohtli Gram G Panchayat in 1990, he managed to get the entries in Exs.PW-4/A, PW-4/B, and PW-4/C, relating to caste namely 'Tarkhan' struck off and substituted the word 'Lohar'. The suggestion of course was denied. If the substitution was with reference to the entry in only one register, it could have been explained away as a mistake. But it is significant that the H registers of the years 1976, 1977 and 1982-1989 all show the caste of

the family as 'Tarkhan' and all the entries are struck off and substituted by the word 'Lohar'. The High Court has refused to rely on Ex. PW4/A, B, C only on the ground that the entries in the register contained some other corrections and that the manner in which they were maintained raised a doubt about the probative value of the document. We are of the view that in the absence of any satisfactory explanation of the caste 'Tarkhan' being struck off and substituted by 'Lohar', the conclusion is that they were all done subsequent to 1990 when respondent became the Up-Pradhan.

25. The evidence let in by appellant clearly establish the following :

(a) Respondent was born in and is a resident of Mohtli village. His date of birth is 2.5.1956.

(b) Respondent is the last and fifth child of his parents are Milki Ram and Giano. Respondent is the only 'Bodh Raj', son of Milkhi Ram in Mohtli village.

(c) Respondent was a student of government primary and middle schools, Mohtli. The school records show that Respondent is the son of Milkhi Ram of Mohtli and his caste was Tarkhan on the basis of particulars furnished by his father.

(d) In the birth register maintained in the jurisdictional Police Station as per the Punjab Police Rules, his date of birth was registered as 2.5.1956 and the caste of his parents was shown as Tarkhan;

(e) That in the Pariwar Registers maintained by the Gram Sabha between 1976 and 1989, the caste of his family was shown as 'Tarkhan' and that sometime thereafter, it was struck off and shown as 'Lohar'.

The evidence of the residents of Mohtli village (PWs.7 to 10) support the same. There is nothing in the cross-examination of PWs.7 to 10 to disbelieve their statements that the respondent belonged to Tarkhan caste. However, even if we exclude the entire oral evidence, the documentary evidence produced by the appellant, to which we have adverted to above, clearly demonstrate that the respondent's father and his family members including respondent had always held out to be and accepted as persons

A belonging to Tarkhan caste. It was only after 1990, the respondent tried to show that he belonged to Lohar caste.

26. The Learned counsel for the respondent submitted that in view of Ex. PW4/D and Ex.RW-5A, he should be considered as having established that he belongs to Lohar caste. Ex. PW-4/D is the Pariwar B Register extract for the year 1990 onwards. The same no doubt shows the caste of respondent as Lohar. But when Ex.PW-4/D is read in conjunction with PW-4/A, PW-4/B and PW-4/C which are the Pariwar Register extracts relating to the previous years (1976, 1977 and 1982-1989) where his caste was shown as Tarkhan and later altered as 'Lohar', C the entry in Ex.PW-4/D becomes a self serving statement. The respondent was elected as the Upapradhan of Mohtli Gram Panchayat in the year 1990 (RW-6, Ved Prakash, belonging to his party was elected as Pradhan). In his capacity as Upapradhan he had access to the records of the Panchayat, and it is obvious that with the intention of representing D himself as belonging to a Scheduled Caste of Lohar, had ensured that his caste was shown as Lohar in PW-4/D. The alteration of the entries relating to caste in Exs.PW4/A, 4/B and 4/C, from 'Tarkhan' to 'Lohar' should be looked at in this background, particularly when it is seen that the correction of caste by striking out 'Tarkhan' is not only in regard to the E family of respondent but also in the case of some of the relatives of the respondent. In so far as the caste certificate Ex.RW-5/A issued by the Executive Magistrate, Indora, relied on by respondent, it has to be observed that such caste certificates are not given after a thorough investigation. When the caste of respondent is in issue and when primary F evidence regarding caste is led by appellant, and the attempt of respondent to claim to be a 'Lohar' from 1990 is evident, the caste certificate issued by the Executive Magistrate on 1.12.1991 cannot be taken as evidence to prove the caste of the respondent. The decision of this Court in *R. Palanimuthu* v. *Returning Officer,* [1984 (Supp.) SCC 77], supports G this position. In *Madhuri Patil* (supra), this court observed that when the school records show a particular caste, the caste certificates issued to the candidates and his relatives by the Executive Magistrate showing a different caste should be ignored. Reference was also made to the caste certificate of two relatives. But they are also of the period subsequent to H 1990 when respondent started showing that he belonged to Lohar caste.

They have to be ignored as observed by this Court in *Madhuri Patil* (supra). A

27. In view of the above, we are of the view that the appellant has clearly established that the respondent and his family belong to Tarkhan caste which is not a scheduled caste in Himachal Pradesh. It is also clear that from around 1990, the respondent has made efforts to show his caste as 'Lohar', a scheduled caste. Consequently, we hold that the respondent who did not belong to a Scheduled Caste, was not qualified to be chosen to fill a seat in the Legislative Assembly reserved for Scheduled Castes. B

28. Therefore, we allow this appeal, set aside the judgment of the High Court and declare the election of the returned candidate (Bodh Raj) from 35-Gangath Assembly Constituency in the 2003 Election, to be void. Parties to bear their respective costs. C

R.P. Appeal allowed. D