

**Reserved on: 26.02.2014**  
**Delivered on: 29.05.2014**

**Case :- WRIT - C No. - 35775 of 2013**

Petitioner :- Swaroop Chand Singh  
Respondent :- State Of U.P. Thru Secy. And 2 Others  
Counsel for Petitioner :- Saurabh Kumar,P.S. Gupta  
Counsel for Respondent :- C.S.C.

**Hon'ble Sunil Ambwani, J.**  
**Hon'ble Devendra Pratap Singh, J.**  
**Hon'ble Dr. Satish Chandra, J**

(Judgement delivered by Hon'ble Sunil Ambwani, J)

1. We have heard Sri Ravi Kant, Senior Advocate, assisted by Sri Ram Raj Prajapati and Sri Ashok Mehta, Senior Advocate assisted by Sri Saurabh Kumar, for the petitioner. Sri Rakesh Kumar Gupta appears for Sri Hari Sharan Gautam (Intervenor). Sri Ramesh Upadhyay, learned Chief Standing Counsel assisted by Sri Vivek Shandilya, Additional Chief Standing Counsel appear for State respondents.

2. This reference arises out of a difference of opinion expressed by a Division Bench presided by one of us (Hon'ble Sunil Ambwani, J) with the Division Bench judgement of Lucknow Bench of the Court in Service Bench No.2080 of 2011 (State of UP Vs. Vijay Shankar & another) decided on 23.12.2011. The questions, which have been referred to be considered by this larger Bench, are as follows:-

"(1) Whether 'Kasera' is a sub-caste of 'Shilpkar' which is notified in the category of Scheduled Caste under Article 341 (1) and (2) of the Constitution of India?

(2) Whether the judgment dated 23.12.2011 in Service Bench No.2080 of 2011 (State of UP and another Vs. Vijay Shanker and another) is correct in law?"

3. The facts giving rise to the Writ petition No. 35775 of 2013

are that Sri Swaroop Chand Singh son of Srichandra - the petitioner claims that he belongs to 'Kasera' caste, which according to him is a sub-caste of 'Shilpkar', and falls within the category of Scheduled Caste, as notified under Article 341 of the Constitution of India. The petitioner applied to the District Magistrate, Mirzapur to issue a caste certificate for his minor son Tarang Singh, to verify that he belongs to Scheduled Caste for claiming admission to any College. In the writ petition, the petitioner has prayed for a writ, order or direction in the nature of mandamus directing respondent No.2 – the District Magistrate, district Mirzapur to issue a Scheduled Caste Certificate in the name of petitioner's son namely Tarang Singh in the light of judgement and order dated 23.12.2011 passed in Writ Petition No. 2080 of 2011 (State of U.P. And others Vs. Vijay Shankar and another), within a period specified by the Court.

4. The petitioner has relied on the judgment dated 23.12.2011 of Lucknow Bench of the Court in Writ Petition No. 2080 of 2011 - State of U.P. and others Vs. Vijay Shankar and another (Supra), in which a Division Bench, sitting at Lucknow Bench, considered the challenge of the State of U.P to the judgment of the U.P. State Public Services Tribunal by which the Tribunal granted the relief to Sri Vijay Shanker, who was appointed as Assistant Prosecution Officer on the recommendation of the U.P. Public Service Commission by virtue of a Scheduled Caste Certificate issued by the Tehsildar, Mirzapur dated 02.02.1987. The said certificate verified that he belongs to 'Shilpkar' caste. Later on, a complaint was made against Sri Vijay Shankar on the ground that he has obtained the appointment by submitting forged Scheduled Caste Certificate; actually, the caste of Sri Vijay Shankar was recorded as 'Kasera' in School Certificate. On this ground, he was dismissed from service vide order dated 21.05.2007. The U.P.

Public Services Tribunal granted the relief to him by setting aside the punishment order and reinstated him with all consequential service benefits and continuity in service. The Division Bench in its judgment dated 23.12.2011, dismissed the writ petition filed by the State of U.P holding that on a perusal of records, it appears that the Collector has written a letter on 14.12.2005, wherein he has mentioned that no certificate was issued during the year 1983-85, pertaining to the 'Kasera' caste being a Scheduled Caste. For this purpose, an enquiry was made by the Collector from all the Tehsils, but the fact remains that no specific query was made from the Tehsildar, Mirzapur, who had issued the said certificate. Moreover, it was not mandatory to make an entry for issuing every certificate. The Division Bench further observed that the Tribunal examined the National Citizen Register wherein it was shown that opposite party's parents names were mentioned as Sri Laxmi Narain Son of Mata Prasad and mother Smt. Suraj Mani wife of Laxmi Narain and they were categorized as 'Shilpkar', which admittedly belongs to Scheduled Caste. The Tribunal also observed that 'Kasera' is a sub caste of 'Shilpkar' as per Government Order dated 12.12.1950, and that there are 26 sub castes of 'Shilpkar', and 'Kasera' is one of them. Thus, 'Kasera' being a sub caste of 'Shilpkar' comes under the category of Scheduled Caste. When it is so, then it was found that there was no reason to interfere with the impugned order passed by the Tribunal.

5. Sri Ravi Kant, Senior Advocate, assisted by Sri Ram Raj Prajapati appearing for the petitioner submits that 'Shilpkar' has been notified by the President of India as Scheduled Caste in the Constitution (Scheduled Castes) Order 1950 in Part VIII Uttar Pradesh at Sl. No.62. 'Shilpkar' is a generic name of community who have been socially, economically and educationally deprived of their rights. Prior to Independence of India, in the census report

of 1931 by J.S. Hutton, the petitioner's community was shown in the category of 'depressed class', and on the basis of the said report, the community after Independence was shown in the category of Scheduled Caste being 'Shilpkar' and 'Kumhar', after following the terms and conditions as provided under law. The State Government after the directions of the Government of India, directed the Anusuchit Jati Evem Anusuchit Janjati Shodh Evem Prashikshan Sansthan, to submit an ethnographic report about the status of the community of Prajapati/Kumhar. On the basis of the report, the State Government found that the status of the community is lower in status than other communities, and the State Government thus sent its report with a proposal for providing benefit for including it in the category of Scheduled Caste. The State Government subsequently on the basis of Government Order dated 12.09.1950, and the decision taken in Writ Petition No. 2080 of 2011, provided an interim benefit, as given to the community of the Scheduled Caste. The community in the category of 'Shilpkar' is thus entitled to all benefits as provided in the State list to the community of Scheduled Caste.

6. Sri Ravi Kant further submits that this Court has permitted Uttar Pradeshiya Prajapati Mahasabha (Registered) through its Pramukh Mahasachiv Sri Heera Lal Son of Late Budhai R/o Moahalla Near Bari Vihari, Ram Rai Patti, Post Shiva Park, Line Bazar, Jaunpur to be heard in the proceeding. He submits that admittedly 'Shilpkar' is a notified Scheduled Caste and that there are 26 sub castes of 'Shilpkar', which were so notified in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956 (Act No. 63 of 1956) by putting a note under Part-VIII-Uttar Pradesh. All these sub castes were classified as 'depressed classes' as per census report of 1931, and thus they cannot be denied the benefit of castes certificate, issued to these sub

castes including 'Kasera' as a sub caste of 'Shilpkar' caste, notified as Scheduled Caste.

7. Sri Ashok Mehta submits that Note (4) to Appendix A to the Government Order dated 12.09.1950, provided 26 sub castes within the caste of 'Shilpkar' notified as Scheduled Caste in the State of U.P. at Sl. No. 62 of the Government Order dated 12.09.1950. Note 4 reads as follows:-

“Within Shilpkar – Atpahariya, Auji, Barhai, Beda, Bhat, Kumbar, Koli, Lohar, Rudia, Sunar, Pahri, Jogi, Dhunar, Chhipli, Dhoni, Kolai, Jhumariya, Tamta, Kasera, Dhaloti, Vakhariya, Kolta, Halia, Hurakya, Bhul and Chunariya.”.

8. Sri Ashok Mehta further submits that if any enquiry is to be made whether 'Kasera' is a sub caste of 'Shilpkar', the State is competent to refer the matter first at the District Level Scrutiny Committee and thereafter to the State Level Scrutiny Committee which have been constituted in the State of U.P. He has relied on the judgment of the Supreme Court in **Kavita Solunke Vs. State of Maharashtra and others** in Civil Appeal no. 5821 of 2012 decided on 9.8.2012, in which following the judgment in **State of Maharashtra Vs. Milind** [2001 (1) SCC 4], as explained in **R. Vishwanatha Pillai Vs. State of Kerala** [2004 (2) SCC 105; **State of Maharashtra Vs. Sanjay K. Nimje** [2007 (14) SCC 481; **Bank of India Vs. Avinash D. Mandivikar** [2005 (7) SCC 690] and **Union of India Vs. Dattatray** [2008 (4) SCC 612], it was held that if a person has secured appointment or admission on the basis of false caste certificate, he cannot retain the said certificate obtained by him, and the Courts will refuse to exercise its discretionary jurisdiction depending upon the facts and circumstances of each case. Relying on Nimje's case, it was held that since there was no allegation against the appellant that she had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an undeserved benefit in the

matter of appointment as a teacher, there is no reason why the benefit of protection against ouster should not be extended to her, subject to the usual condition that the appellant shall not be ousted from service and shall be reinstated if already ousted, but she would not be entitled to any further benefit on the basis of certificate, which she has obtained, and which was 10 years after its issue cancelled by the Scrutiny Committee.

9. Sri Rakesh Kumar Gupta appearing for Sri Hari Sharan Gautam who claims to be President of Dr. B.R. Ambedkar Granthalaya Evam Jan Kalyan Samiti, Gorakhpur and was allowed to intervene submits that previously in the year 2005, the Government of U.P illegally included 16 OBC castes in the list of Scheduled Caste. A Public Interest Litigation No. 76922 of 2005 (Dr. B.R. Ambedkar Granthalaya Evam Jan Kalyan Samiti Vs. State of U.P. And others) was filed wherein a Division Bench of the Court granted stay order against that notification of the State Government. He submits that benefit of reservation for Scheduled Caste cannot be given, except in accordance with notification by the President under Article 341 (1) or the notification under Article 341 (2) of the Constitution of India, and in any case the State Government does not have authority to include any caste or sub caste in the list of Scheduled Caste, notified under Article 341 (1) or (2) of the Constitution of India.

10. The Uttar Pradesh Public services (Reservation) for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994, lays down the percentage of reservation in public services and posts at 21 % for Scheduled Castes; 2 % for Scheduled Tribes and 27 % for Other Backward Classes of citizens. The term 'other backward classes of citizens' has been defined in Section 2 (b) of the Act as 'backward classes of citizens specified in Schedule-I'. The Schedule-I of the Act notified

66 other backward classes of citizens, which include **'Kasera, Thathera, Tarakhar'** at Sl. No. 59.

11. The notification including the 26 sub castes of 'Shilpkar', alleged to be included in the Appendix-A of the Constitution (Scheduled Castes) Order 1950 was amended by Scheduled castes and Scheduled Tribes Orders (Amendment) Act 1956, and thereafter by Scheduled Castes and Scheduled Tribes Lists (Modification) Order 1956, by which entire Appendix-A to Part-VIII was omitted.

12. It is submitted by Sri Rakesh Kumar Gupta that 'Kasera' is not a caste, which is a sub caste of 'Shilpkar' which has its own identity. He submits that considering the background of castes in the State of U.P., 'Kasera' and other sub castes are included in the notified list of Other Backward Classes.

13. Sri Ramesh Upadhyay, learned Chief Standing Counsel appearing for the State has filed an affidavit of Sri Ram Gopal, Special Secretary, Department of Social Welfare Government of U.P Lucknow, in which it is stated as follows:-

3. That, in exercise of powers conferred by clause (1) of Article 341 of the Constitution of India, the President made the Constitution (Scheduled Castes) Order, 1950, by which in State of Uttar Pradesh 63 castes were declared to be Scheduled Castes and in Bundelkhand Division and the portion of Mirzapur District south of Kaimur Range the 'Gond' caste was also declared to be deemed to be Scheduled Caste. True copy of the Constitution (Scheduled Castes) Order, 1950, is being annexed herewith and marked as ANNEXURE NO. 1 to this affidavit.

4. That, thereafter, the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 was enacted and in the Scheduled I the list of Scheduled Castes has been provided, in which 64 castes are shown to be Scheduled Caste and throughout the State excluding Agra, Meerut and Rohilkhand Division 'Kori' and in Bundelkhand Division and the portion of Mirzapur District south of Kaimur Range 'Gond' caste has been declared as Scheduled Caste. True copy of the

Scheduled Castes and Scheduled Tribes (Amendment) Act, 1956, is being annexed herewith and marked as ANNEXURE NO. 2 to this affidavit.

5. That, thereafter, the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 was made by the President in pursuance of Section 41 of the State Reorganization Act, 1956 (37 of 1956), and Section 14 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956), by which the Constitution (Scheduled Castes) Order, 1950 has been modified in the manner and to the extent specified in Schedule I. True copy of the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, is being annexed herewith and marked as ANNEXURE NO. 3 to this affidavit.

6. That, copies of the Government Orders, which provide the procedure for issuing caste certificate prior to issuance of Government Order dated 27.11.2010, are being collectively annexed herewith and marked as ANNEXURE NO. 4 to this affidavit.

7. That, from the perusal of the Circular dated 22.05.1957 it is clear that the List of Scheduled Castes and circulated alongwith the government Order dated 12.09.1950 and reproduced as Appendix 'A' to the Circular dated 22.05.1957, is now no more in force. As such, the argument of the counsel for the petitioner that there are 26 sub-castes of caste 'Shilpkar', has no force. The clear and legible copy of the Circular dated 22.05.1957 is being annexed herewith and marked as ANNEXURE NO. 5 to this affidavit.

8. That, the Lucknow Bench of this Hon'ble Court in the case of Ghanshyam Das Vs. Union of India and others held that at no point of time the 'Kasera' community was included in the list of Scheduled Castes of U.P. True copy of the order dated 09.12.2004 of the Lucknow Bench of this Hon'ble Court in the case of Ghanshyam Das Vs. Union of India and others, is being annexed herewith and marked as ANNEXURE NO. 6 to this affidavit.

9. That, in view of the facts and circumstances stated herein above, it is respectfully submitted that the present affidavit may kindly be taken on record.”

14. Sri Ramesh Upadhyay submits that in the Constitution (Scheduled Caste) Order 1950, 63 Castes were declared as Scheduled Caste in the State of U.P., and in Bundelkhand Division, and the portion of Mirzapur district south of Kaimur

Range 'Gond' was also declared to be Scheduled Caste in the State of U.P. Thereafter Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956 (Act No. 63 of 1956) was enacted . In schedule-I, Part-VIII, a list of Scheduled Castes was notified, and in which 64 castes were shown. The 'Kori' caste was also declared Scheduled Caste through out the State excluding Agra, Meerut and Bundelkhand divisions and 'Gond' caste was declared as Scheduled Caste in Bundelkhand division and the portion of Mirzapur district south of Kaimur Range. Thereafter, Scheduled Castes and Scheduled Tribes Lists (Modification) Order 1956, was made by the President under Article 341 (1) of the Constitution of India in pursuance of Section 41 of the States Reorganization Act 1956, and Section 14 of the Bihar and West Bengal (Transfer of Territories) Act 1956 by which Constitution (Scheduled Caste) Order 1950 was modified and to the extent specified in Schedule-I. He submits that in the circular dated 22.05.1957, issued in pursuance to Modification Order 1956, it is clear that Appendix-A to the circular, which was included and circulated along with Government Order dated 12.09.1950, is no more in force. Thus, the 26 sub casts of 'Shilpkar' are no more notified as sub caste to be included as Scheduled Caste since 22.05.1957.

15. Sri Ramesh Upadhyay further submits that the question whether 'Kasera' caste is to be included within the caste of 'Shilpkar' was decided by a Division Bench of the Court at Lucknow Bench in **Ghanshyam Das vs. Union of India and others** decided on 9.12.2004 [2005 (2) AWC 1848]. In this case a claim was made that 'Kasera' is a sub caste of 'Shilpkar'. A caste certificate, showing the petitioner as 'Kasera' caste and belonging to Scheduled Caste was issued to him on 6.12.1996. A complaint was made against the said certificate. The Tehsildar after making enquiries, cancelled the caste certificate vide order

dated 31.3.1999. The writ petition filed against the cancellation order was dismissed by the Lucknow Bench of the Court relying on paragraph 7 and 9 of the counter affidavit. Paras 8 and 9 of the judgment of the Lucknow Bench in Ghanshyam Das case (Supra) is quoted as under:-

“8. In paragraphs 7 and 9 of the counter-affidavit filed by the Union of India is as under :

(7) "That in reply to the contents of paras 8 to 10 of the writ petition, it may be pointed out that the list of Scheduled Castes of Uttar Pradesh is contained in Part XVIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950, as amended up to date. The community "Shilpkar" has been specified as Scheduled Castes at serial No. 65 in relation to the State of Uttar Pradesh. That the Kasera Community does not find place in the said order. It may be stated that Article 341 of the Constitution prescribes procedure for specification of community as Scheduled Castes. Clause (1) envisage that first specification of Scheduled Castes in relation to a particular State is by a notified Order of the President, after consultation with the State Government concerned. Under Clause (2) the notification once issued in exercise of powers contained in Clause (1) can be modified subsequently only through an Act of Parliament. At no point of time the Kasera Community was scheduled as S. C. in relation to the State of Uttar Pradesh. Thus, Annexure-5 stated to have been issued by the Government of Uttar Pradesh is not legally tenable. The State Government may merely recommend and it cannot include in or exclude from the list of Scheduled Castes any community.

(9) That the contents of paras 18 and 19 of the writ petition are not admitted as framed. It may be pointed out that the State Government of Uttar Pradesh have no power to amend the S. C. list of that State contained in Part XVIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950. It is also submitted that at no point of time the community Kasera was included in the S. C. list of Uttar Pradesh. The order stated to have been issued by the Government of Uttar

Pradesh in the year 1957 is not legally tenable. The Government of U. P. vide U. P. Act No. 4 of 1994 has neither added nor excluded from the lists of Scheduled Castes any community. The Government of Uttar Pradesh is within its power to notify any community other than S.Cs. and S.Ts. as other Backward Class."

9. From the record, it reveals that at no point of time the Kasera community was included in the list of Scheduled Castes of U. P. The petitioner who belongs to Kasera community cannot be said to be Scheduled Castes. There is no illegality in the impugned order. The writ petition is devoid of merits. It is accordingly dismissed."

16. Sri Ramesh Upadhyay submits that Vijay Shankar's case (Supra), the attention of the Division Bench was not drawn to the earlier Division Bench judgment of the Court dated 9.12.2004, in Ghanshyam Das case (Supra). The conclusion drawn in Vijay Shankar's case is contrary to the judgment of the same Court in Ghanshyam Das case (Supra).

17. The Constitutional scheme specifies the castes, races or tribes or parts of or groups within castes races or tribe which shall for the purpose thereof be deemed to be Scheduled Castes. Article 341 of the Constitution provides as follows:-

"Art. 341 (1). The President may with respect to any State or with the Governor thereof by public notification, specify the castes, races or tribes or parts of or groups within castes races or tribe which shall for the purpose thereof be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be.

(2). Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

18. The object of Article 341 is to provide additional protection to the members of the Scheduled castes having regard to the

social and educational backwardness from which they have been suffering since a considerable length of time and to keep away disputes touching whether a caste is a Scheduled Caste or not for the purpose of the Constitution.

19. In *State of Maharashtra Vs. Milind (Supra)*, it was held that the object of Articles 341, 342, 15 (4) and 16 (4-A) is to provide preferential treatment for the Scheduled Castes and Schedule Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer.

20. A list of Scheduled Caste was initially notified in the Constitution (Scheduled Castes) Order 1950, which was amended by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956, as a result of State Reorganization Act 1956. No one can claim that his caste should be included as Scheduled Caste unless the claim is examined and with the recommendation of the Governor of the State, such caste is included in the list by an order made by President and after he has made an order by a Parliamentary enactment. In including any caste in Presidential Order, the President is authorised to limit the notification to parts or groups within the caste depending on the educational and social backwardness.

21. In **Bhaiyalal Vs. Harkishan Singh** [AIR 1965 SC 1557] a constitution bench of the Supreme court held that the object of clause (1) of Article 341 is to avoid all disputes as to whether a caste is a scheduled Caste or not, for the purposes of the Constitution. The Scheduled Castes Order 1950 has been promulgated by the President under Article 341. In order to determine whether a particular caste is a Scheduled Caste within the meaning of Article 341, one has to look into the terms of the Order. Hon'ble P.B. Gajendra Gadkar, Chief Justice of India, speaking for the bench, held in paras 9 and 10 as follows:-

“9. Whilst we are referring to this aspect of the matter, we may point out that the Order has taken good care to specify different castes under the same heading where enquiry showed that the same caste bore different names, or it had sub- castes which were entitled to be treated as scheduled castes for the purposes of the Order. In the district of Datia, for instance, entry 3 refers to Chamar, Ahirwar, Chamar Mangan, Mochi or Raidas. Similarly, in respect of Maharashtra, Item 1, entries 3 and 4 refer to the same castes by different names which shows either that the said castes are known differently or consist of different sub- castes. Likewise, item 2, entry 4 in the said list refers to Chamar, Chamari, Mochi, Nona, Rohidas, Ramnami, Satnami, Surjyabanshi or Surjyarnami. It is also remarkable that in Maharashtra in certain districts Chambhar and Dhor are included in the list separately. Therefore, we do not think that Mr. Chatterjee can seriously quarrel with the conclusion of the High Court that the appellant has not shown that he belongs to the Chamar caste which has been shown in the Order as a scheduled caste in respect of the Constituency in question.

10. Mr. Chatterjee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the States. His argument was that what the President can do under Art. 341(1) is to specify the castes, races or tribes or parts thereof, but that must be done in relation to the entire State or the Union territory, as the case may be. In other words, says Mr. Chatterjee, the President cannot divide the State into different districts or subareas and specify the castes, races or tribes for the purpose of Art. 341(1). In our opinion, there is no substance in this argument. The object of Art. 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and education are backwardness of the race, caste or tribe justifies such specification. In fact, it is well-known that before a notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the

castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. Therefore, Mr. Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Art. 341 (1).”

22. In **A. Chinnappa Vs. V. Venkatamuni** [(1996) 3 SCC 585], it was held by the Supreme Court that once the Parliament by law includes in or excludes from any race, caste, tribe, parts of or groups within any caste, race or tribe, the President thereafter shall have no power to vary it by any subsequent notification. In **Nityanand Sharma Vs. State of Bihar** [1996 (3) SCC 585]; **S. Swvigaradoss Vs. Zonal Manager** [(1996) 3 SCC 100]; **Prabhudev Mallkarjunaiah Vs. Ramchandra Veerappa** [(1996) 4 SCC 431]; **Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur** [(1996) 8 SCC 264]; **Vinay Prakash Vs. State of Bihar** [(1997) 3 SCC 406] and **State of Maharashtra Vs. Milind** (Supra), the Supreme Court held that the Court is also devoid of power to include in, or exclude, or substitute, or declare synonyms to be of a scheduled caste or scheduled tribe or parts thereof or group of such caste or tribe. The Courts have no power to go behind the order, or to hold any inquiry or to let in any evidence to determine whether or not any particular community falls within the Order or not. The States have no power to amend Presidential Orders. In **Shree Surat Valsad Jilla K.M.G. Parishad Vs. Union of India** [(2007) 5 SCC 360], the Supreme Court held that the list prepared by the President under Article 341 (1) forms one class of homogeneous group. Only one list is to be prepared by the

President and, if any amendment thereto is to be made, the same is to be done by Parliament. Even the State does not have any legislative competence to alter the same.

23. It is not open to anybody to seek any modification of the Order by producing any evidence to show that though caste A is mentioned in the Order, caste B was also a part of Caste A, and as such was deemed to be a Scheduled Caste. In *State of Maharashtra Vs. Milind (Supra)*, it was held that the Presidential Order made under Article 341 (1) can be amended only by the legislation by Parliament, and not even by subsequent notification by the President. Such amendment cannot be made by the court even indirectly.

24. The aforesaid discussion, clearly establishes that the sub castes of 'Shilpkar', as notified in Note 4 in Annexure-A to the Constitution (Scheduled Castes) Order 1950, was replaced by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1956, consequent upon States Reorganization Act 1956, thereafter by Scheduled Castes and thereafter by Scheduled Tribes Lists (Modification) Order 1956, and accordingly the list of Scheduled Castes circulated in Government Order dated 12.09.1950, and reproduced as Appendix-A to the Government Order dated 22.05.1957, is now no more in force. The petitioner cannot rely upon Note appended to Annexure-A to the Government Order dated 12.09.1950, to submit that 26 sub castes are included with the caste of 'Shilpkar', and can claim the benefit of Scheduled Case for any purpose including contesting in election, admission in educational institution, for appointment on any posts etc.

25. In view of the aforesaid discussions, we do not find any force in the argument of Sri Ravi Kant that 'Shilpkar' is a generic name of community, and that 26 sub castes, which are universally known as depressed class in the census report of 1931, are to be

included in the caste of 'Shilpkar'. It is not open for the Court to take any evidentiary value on the report, and to hold that the 'Kasera' is a sub caste of 'Shilpkar', which was so notified for the State in the Presidential Order, or subsequently by a Parliamentary enactment, or by Scheduled Tribes Lists (Modification) Order 1956.

26. On the aforesaid findings, we decide the Question No.1 to the effect that 'Kasera' is not a sub caste of 'Shilpkar'. The persons belonging to 'Kasera' or any other sub caste, which were included in Note 4 of Appendix-A of Part-VIII of the list of the Constitution (Scheduled Castes) Order 1950 are not entitled to get certificates to belong to the Scheduled Caste.

27. So far as question No. 2 is concerned, in State Vs. Vijay Shankar and another (Supra) [Writ Petition No. 2080 of 2011 decided on 23.12.2011], a Division Bench of the Court sitting at Lucknow Bench held that no specific query was made from the Tehsildar, Mirzapur, who has issued the caste certificate, and that it was not mandatory to make an entry for issuing every certificate. The Tribunal has examined the National Citizen Register, wherein it was shown that opposite party's parents were categorized as 'Shilpkar', which admittedly belongs to scheduled caste; the Tribunal also observed that 'Kasera' is a sub caste of 'Shilpkar' as per Government Order dated 12.12.1950, and that Kasera being a sub caste of 'Shilpkar, comes under the category of scheduled caste.

28. We may observe here that the Collector, vide letter dated 14.12.2005, after making enquiries, informed that no certificate was issued during the year 1983-85 pertaining to the 'Kasera' caste being a scheduled caste. The scheduled caste certificate was issued to Vijay Shankar, to belong to the caste of 'Shilpkar' by the Tehsildar on 2.2.1987, whereas he was recorded as 'Kasera' in the school certificate. The Division Bench further observed that

no specific query was made from the Tehsildar, Mirzapur, who has issued the said certificate to Sri Vijay Shankar. Since we have held after tracing the legislative background under Article 341 (1) and (2) of the Constitution of India that 'Kasera' is not a sub caste of Shilpkar, we need not go into the question nor any further discussion is required.

29. The observation of the Division Bench that it was not mandatory for the Tehsildar to make an entry for issuing every certificate is not borne out from the procedure prescribed for issuing such certificate. Sri Ramesh Upadhyay submits that there was no need to issue any specific Government Order, providing that record should be kept for issuing certificate inasmuch as "System of Record, Files and Registers Relating to Correspondence" in the U.P. Revenue Manual provides for maintenance of records for every document issued by Revenue Officer in the State of U.P. As the Tehsildar has been authorised to issue caste certificate, he is required to maintain the records of every file in accordance with Rules 54 to 59 of Chapter III of U.P. Revenue Manual. All enquiries with regard to issuance of caste certificate can be made from the records maintained by the concerned Tehsildar. He further submits that the Government is now trying to simplify the procedure of issuing caste certificate, income certificate and residence certificate through e-legalix system from the Common Service Centre (Jan Sevak Kendra). The applicants under the Government Order dated 27.11.2010, are to be provided a prescribed format at the Common Service Centre. The Centre operator will fill up the details in the e-form. A print out of entries made in the e-form will be given to the applicant, on which the applicant may sign which will be scanned and a print out of the same with unique number will be given to him as acknowledgement receipt. The Tehsildar will examine the e-form, and will make necessary enquiries through concerned

Lekhpal and Revenue Inspector with regard to his/her caste, by making physical inspection of which reports will be prepared and sent to the Tehsildar within one week. After the Tehsildar is satisfied with the enquiry, with regard to caste of the person, the authorized representative or CCS will issue the caste certificate to the concerned person. It can also be examined at any time from the data stored in the computer. Sri Upadhyay submits that now a fair, transparent and simplified procedure has been evolved, which will not cast any doubt, and will be open to any enquiry in future for its verification.

30. On the aforesaid discussion, we also answer the question No.2 in negative, and hold that the judgment dated 23.12.2011, rendered by the Lucknow Bench of the Court in State of Vs. Vijay Shankar and another – Writ Petition (Service Bench) No. 2080 of 2011, is not correct in law.

31. In view of the aforesaid findings and answers given to the questions referred to us, we do not propose to send the matter back to the Division Bench, as we do not find that any relief can be granted to the petitioner for issuing caste certificate to his son, to belong to Scheduled Caste on the basis of judgment in State of U.P. Vs. Vijay Shankar and another (Supra).

32. The writ petition stands **dismissed** with no order as to costs.

Dt. 29.05.2014  
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