IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

WRIT PETITION No. 36056 of 2024

LALIT NARAYAN DHAKAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Bhupendra Singh Dhakad – Advocate for petitioner.

Shri G. K. Agrawal – Government Advocate for respondent/State.

Reserved on : 08.04.2025

Pronounced on : 16.04.2025

ORDER

This petition, under Article 226 of Constitution of India, has been filed seeking the following relief(s):

> A. That, order passed by the respondent no.2, 3 and 4 are respectively dated 04.10.2024 (Annexure P/1) and 09.05.2023 (Annexure P/10) and 02.01.2023 (Annexure P/8) may kindly be set aside in the interest of justice.
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> B. That, respondent no.4 may kindly directed to issue the certificate of OBC (Non-creamy Layer) to the daughter of petitioner Miss Doorva Dhakad.

C. That, any other writ, order or direction as this Hon'ble Court may deems fit in the facts and the circumstances of the case be granted.

2. It is submitted by counsel for petitioner that petitioner filed an application for issuance of a caste certificate of OBC (Non-creamy Layer) for his daughter (Ku. Doorva Dhakad) before respondent No.4. The said application was rejected by order dated 02.01.2023 passed by SDO (Revenue), Pargana Pohri, District Shivpuri in Case No.2227/B-121/2022-23 on the ground that the annual income of petitioner from all sources is 13,80,720/- out of which his annual salary is 13,73,594/- and the income from other sources is 7,126/- and thus the daughter of petitioner is not entitled for the case certificate of OBC under Non-creamy Layer.

3. Being aggrieved by the aforesaid order, petitioner preferred an appeal before the Additional Collector, Shivpuri which was registered as Case No.06/B-121/2023-2024 which was dismissed by Additional Collector Shivpuri by order dated 09.05.2023 on the ground that the order passed by the SDO is in accordance with the circulars issued by the State Government from time to time to ascertain the creamy layer. Being aggrieved by the aforesaid order, petitioner preferred an appeal before Commissioner, Gwalior Division, which was registered as Case No.0076/Appeal/2023-24 which was dismissed on the ground of maintainability.

4. Challenging the orders passed by the authorities, it is submitted by counsel for petitioner that in the earlier round of litigation, the case was remanded and ultimately, the SDO by order dated 02.01.2023 dismissed the application on the ground that petitioner does not fall within the category of Non-Creamy Layer. This Court, by order dated 22.11.2024, had directed the petitioner to apprise as to whether the remedy available to petitioner against the rejection of his application for issuance of caste certificate of OBC (non-creamy layer) lies by approaching the High Level Caste Scrutiny Committee or by filing an appeal and accordingly

the following order was passed:-

> "*It is submitted by counsel for petitioner that his application for grant of caste certificate has been rejected and his appeal has also been dismissed.*
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> *However, in response to query raised by this Court as to whether appeal would lie against the rejection of application for issuance of caste certificate or the petitioner is required to approach the High Level Caste Scrutiny Committee in the light of directions given by the Suprme Court in the case of* ***Kumari Madhuri Patil & Another Vs. Addl. Commissioner, Tribal Development & Others,*** *reported in* ***AIR 1995 SC 94****. The counsel for petitioner has referred to the guidelines issued for issuance of caste certificate to members of SC, ST and OBC and pointed out that against the order rejecting the application for caste certificate, first appeal would lie to Collector and second appeal would lie to the Divisional Commissioner.*
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> *The Supreme Court in the case of* ***Kumari Madhuri Patil (Supra)*** *had directed for constitution of a High Level Caste Scrutiny Committee in every State to verify the fact as to whether a person belongs to a particular caste or not ? However, it appears that incomplete disregard to aforesaid directions given by the Supreme Court in the case of* ***Kumari Madhuri Patil (Supra)****, the guidelines in question have been issued.*
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> *Accordingly, the counsel for petitioner as well as counsel for the respondents are directed to point out as to whether clause 14, 14.1 and 14.2 of the guidelines for issuance of caste certificate to members of Scheduled Castes, Scheduled Tribes and OBC is in accordance with the law laid down by the Supreme Court or are in violation of the said law. They shall also address this Court that in case, if the guidelines are found to be bad in the teeth of the judgment passed by the Supreme Court in the case of Kumari Madhuri Patil (Supra), then why clause 14, 14.1 and 14.2 of the aforesaid guidelines should not be quashed.*
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> *Issue notice to respondents on payment of process fee by registered AD mode payable within three working days. Notices are made returnable within four weeks.*
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> *List this case in the second week of January, 2025."*

5. It is submitted by counsel for petitioner that under the *Madhya Pradesh Lok*

Sewaon Ke Pradhan Ki Guarantee Adhiniyam, 2010 (In short "Adhiniyam, 2010"), an appeal is provided and accordingly, referred to Section 3 of the said Adhiniyam, 2010 and also referred to notification issued by the State of Madhya Pradesh in exercise of powers under Section 3 of the said Adhiniyam, 2010 and submitted that the First Appeal provides to Collector and Second Appeal provides to Commissioner and therefore, appeal filed by petitioner before the Collector and Commissioner was in accordance with the Adhiniyam, 2010

6. The first question for consideration is as to whether the State Government can bypass the judgment passed by the Supreme Court in the case of **Kumari Madhuri Patil & Another Vs. Addl. Commissioner, Tribal Development & Others,** reported in **AIR 1995 SC 94** or not and whether the Writ Petition before this Court is maintainable after the appeal is decided by the Commissioner. It is further submitted by counsel for petitioner that as per Circular dated 08.09.1993 issued by Government of India, Ministry of Personnel, Public Grievances & Pensions, for ascertaining the income/wealth, the income from salaries or agricultural land shall not be clubbed. Therefore, the SDO was wrong in holding that the annual income of petitioner is 13,80,720/-. In fact, the annual income of petitioner has to be counted as Rs.7,126/- and therefore, he falls within the category of non-creamy layer.

7. *Per contra*, the counsel for the State could not justify the act of the State Government in bypassing the judgment passed by Supreme Court in the case of **Kumari Madhuri Patil (supra)** and did not try to justify that instead of providing for approaching the High Level Caste Scrutiny Committee, why the State Government has notified that against the order of rejection of application for issuance of caste certificate, an appeal would lie to Collector and Commissioner.

8. Heard learned counsel for the parties.

9. In the present case, this Court is required to decide two questions i.e.,

(i) Whether the direction given by Supreme Court in the case of **Madhuri Patil Vs. Add. Commissioner, Tribal Development and others** reported in **(1994) 6 SCC 241** to constitute High Level Caste Scrutiny Committee can be nullified by the State Govt. by issuing a notification under Section 3 of *M.P. Lok Sewaon Ke Pradan Ki Guarantee Adhiniyam, 2010,* as well as guidelines dated 13-1-2014 thereby providing for appeal to Collector and Commissioner against the order rejecting an application for grant of caste certificate or not? ;

(ii) Whether Clause VI of Office Memorandum dated 8-9-1993 issued by Government of India would exclude salary received by persons mentioned in Categories I, II, III, VA who are otherwise not disentitled to the benefit of reservation.

Whether the direction given by Supreme Court in the case of Madhuri Patil Vs. Add. Commissioner, Tribal Development and others reported in (1994) 6 SCC 241 to constitute High Level Caste Scrutiny Committee can be nullified by the State Govt. by issuing a notification under Section 3 of *M.P. Lok Sewaon Ke Pradan Ki Guarantee Adhiniyam, 2010,* thereby providing for appeal to Collector and Commissioner against the order rejecting/allowing an application for grant of caste certificate?

10. On 22-11-2024, this Court had issued notices and had also sought reply as to why Clause 14, 14.1 & 14.2 of guidelines be not quashed. The order dated 22.11.2024 has already been reproduced in earlier paragraph.

11. Accordingly, it is clear that a notice was also issued to show cause as to why clause 14, 14.1 and 14.2 of guidelines dated 13-1-2014 be not quashed.

12. The Supreme Court in the case of **Madhuri Patil (Supra)** had held as under :

> **13.** The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied

admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

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 department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, 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 of Senior Deputy Superintendent of Police in over-all 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 should also 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 pro forma, 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 castes or tribes or tribal communities concerned etc.

6. 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 acknowledgement due or through the head of the educational institution concerned 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/Additional 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.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

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 Caste 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.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

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

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

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 educational institution concerned or the appointing authority by registered post with acknowledgement 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 from further study or continue in office in a post.
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> **14.** Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.

13. Thus, it is clear that an application for grant of Caste Certificate is to be filed before the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner, and the certificate shall be issued by such authority. If any dispute arises regarding genuineness of the caste certificate or the application for grant of caste certificate is rejected, then the aggrieved person has to approach the High Level Caste Scrutiny Committee constituted by the State Govt. in the light of judgment passed by Supreme Court in the case of **Madhuri Patil (Supra).**

14. In the year 2010, Adhiniyam, 2010, came into existence and Section 3 reads as under :

> **Section 3** : The State Government may, from time to time, notify the services, designated officers, first appeal officers, second appellate authority and stipulated time limits, to which this Act shall apply.

15. By Notification dated 10-4-2013 issued under Section 3 of Adhiniyam, 2010, the State Govt. has provided that designated officer for issuance of Caste Certificate would be S.D.O. (Revenue), first appeal officer would be Collector and second appellate authority would be Commissioner. Similarly in exercise of executive powers, the GAD has issued circular dated 13-1-2014 thereby laying

down a separate procedure for issuance of caste certificate and also by providing for appeal and second appeal.

16. Now, the next question for consideration is that by issuing notification under Section 3 of Adhiniyam, 2010, as well as circular dated 13-1-2014, whether the State Govt. has bypassed the Judgment passed by Supreme Court in the case of **Madhuri Patil (Supra)** or not?

17. If an application for issuance of Caste Certificate is allowed by designated officer, then the said order has to be challenged by any aggrieved person before High Level Caste Scrutiny Committee because even according to guidelines dated 08.09.2014, no appeal is provided against grant of caste certificate. In the light of **Madhuri Patil (supra)**, a person of general public can also object to the grant of caste certificate. Therefore, if the application is rejected, then the said order can also be challenged by aggrieved person. Now the only question is that whether the challenge to the rejection of application for issuance of Caste Certificate shall lie to Collector or High Level Caste Scrutiny Committee.

18. In the light of judgment passed by Supreme Court in the case of **Madhuri Patil (Supra),** the jurisdiction to decide the correctness of the Caste Certificate lies with High Level Caste Scrutiny Committee. In the light of Judgment passed by Supreme Court in the case of **Madhuri Patil (Supra),** a High Power Caste Scrutiny Committee has been constituted and by circular dated 8-9-1997, procedure to be adopted by the Committee, has also been provided which reads as under :

> ''छानबीन समिति द्वारा अपनाई जाने वाली जांच प्रक्रिया छानबीन समिति, जांच का कार्य पुलिस अधिकारी के माध्यम से करावेगी। जांच अधिकारी मौके पर जाकर विस्तृत जांच प्रतिवेदन छानबीन समिति को निर्धारित अवधि के अंदर प्रस्तुत करेगा।
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> 2. छानबीन समिति, यदि सतर्कता अधिकारी की रिर्पोट के आधार पर यह पाती है कि आवेदक का सामाजिक स्तर का क्लेम सही नही है या संदेहास्पद है या गलत रूप से क्लेम

प्रस्तुत कर रहा है तय समिति ऐसे आवेदक को सर्तकता अधिकारी की रिर्पोट की प्रति के साथ पंजीकृत डाक से रसीद सहित, कारण बताओ नोटिस सूचना पत्र शैक्षणिक संस्था य कार्यालय प्रमुख के माध्यम से भेजेंगे। कारण बताओ सूचना पत्र मे इस बात का उल्लेख होगा कि आवेदक अपना अभ्यावेदन या उत्तर कारण बताओ सूचना पत्र प्राप्ति के 15 दिवस के भीतर संचालक को प्रस्तुत करें और किसी भी परिस्थिति मे अभ्यावेदन अथवा उत्तर प्रस्तुत करने के लिए 30 दिन से अधिक का समय नही दिया जायेगा। यदि आवेदक उसे सुनने का और वाद प्रस्तुत करने का अवसर चाहता है तो ऐसा आवेदन या उत्तर प्राप्त होने के पश्चात् समिति की बैठक संचालक बुलायेगे और संयुक्त/अतिरिक्त सचिव, ऐसी समिति के अघ्यक्ष के रूप मे आवेदक को सुनवाई एवं साक्ष्य प्रस्तुत करने का पूर्ण अवसर देंगे। समिति प्रकरण मे निर्णय के लिये आम सूचना जारी करेगी, जिसका प्रचार प्रसार गांव मे या मोहल्ले मे डौंडी या अन्य सुविधाजनक साधनों से किया जायेगा। ताकि यदि कोई व्यक्ति या संध आवेदक के क्लेम का विरोध करना चाहे तो वे कर सके। आवेदक को ऐसा अवसर देने के बाद भी आवेदक को उसके अभिभावक के माध्यम से या अन्य अवसर देने के बाद समिति ऐसी जांच कर सकेगी जिससे आवेदक के क्लेम और अन्य आपत्तियों पर विचार करने पर शीध्र निर्णय लेने के लिए आवश्यक हो। उभय पक्षों को सुनकर समिति एक उचित आदेश पारित करेगी जिसमे निष्कर्ष पर पहुंचने के लिए संक्षिप्त तर्कों अथवा तथ्यों का विवरण दिया जायेगा।

3. ऐसे प्रकरणों जहां सतर्कता अधिकारी की रिर्पोट आवेदक के पक्ष मे हो, समिति को किसी कार्यवाही की आवश्यकता नही होगी।

4. यदि उम्मीदवार अव्यवस्क हो तो उसके माता पिता अभिभावकों को भी सूचना पत्र जारी किया जायेगा ताकि उसके माता पिता/अभिभावक अपने क्लेम के पक्ष मे साक्ष्य प्रस्तुत कर सके।

5. समिति द्वारा जांच प्रतिदिन के आधार पर की जायेगी और किसी भी स्थिति मे इसे पूर्ण करने के लिये 2 माह से ज्यादा समय नही लेगी। यदि जांच समिति यह पाती है कि आवेदक का क्लेम झूठा या असत्य है तो समिति ऐसी जाति प्रमाण पत्र की निरस्त करने या राजसात करने के लिये आदेश पारित करेगी। इस जांच के निष्कर्षों मे से उम्मीदवार या उसके माता पिता/ अभिभावकों को एक माह के भीतर अवगत कराया जायेगा।

6. छानबीन समिति द्वारा पारित आदेश अंतिम होगा।''

19. Thus, in the light of judgment passed by Supreme Court in the case of **Madhuri Patil (Supra)** as well as circular issued by State Govt. a procedure has

been laid down for adjudicating the question of Caste Certificate and a detailed enquiry by different agencies has been provided. Even a common man can object to the issuance of Caste Certificate in favour of aspirant. Whereas by issuing notification under Section 3 of Adhiniyam, 2010, the State Govt. has merely provided for Appellate Authority, First Appeal Officer(s) and Second Appellate Authority. Even in guidelines dated 13-1-2014, no procedure has been provided for adjudicating the claim regarding Caste Certificate by the First Appeal Officer and Second Appellate Authority. Thus, the direction given by the Supreme Court in the case of **Madhuri Patil (Supra)** regarding constitution of High Level Caste Scrutiny Committee and the procedure to be followed by it has been by-passed by the State Govt. by issuing notification under Section 3 of Adhiniyam, 2010 as well as guidelines dated 13-1-2014. Now the only question for consideration is that whether the State Govt. can bypass the judgment passed by Supreme Court in the case of **Madhuri Patil (Supra)** or not?

20. The GAD by its circular dated 13-1-2014 has issued detailed guidelines for issuance of certificate. As per these guidelines, the designated officer has to direct his subordinate revenue officer to conduct an enquiry/spot inspection if necessary. However, no procedure has been laid down for the appellate authority to follow. In the circular dated 8-9-1997 as well as the judgment passed by the Supreme Court in the case of **Madhuri Patil (Supra)** a different authority i.e., High Level Caste Scrutiny Committee consisting of authorities mentioned in para 13(5) of the judgment has been constituted and separate procedure has been laid down i.e., Para 13(4) to 13(12) of the judgment. However, the State Govt. by issuing guidelines dated 13-1-2014 in exercise of its executive powers has given complete go by to the law laid down by Supreme Court in the case of **Madhuri Patil (Supra).**

21. Article 141 and 142 of Constitution of India read as under:

> **141. Law declared by Supreme Court to be binding on all courts**.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.
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> **142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc**.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
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> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

22. The Supreme Court in the case of **Palitana Sugar Mills (P) Ltd. v. Vilasiniben Ramachandran,** reported in **(2007) 15 SCC 218** has held as under:

> **12.** It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt is to belittle the issues and the orders of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the Apex Court.

23. The Supreme Court in the case of **S. Nagaraj v. State of Karnataka,** reported in **1993 Supp (4) SCC 595** has held as under :

> **12.** Was it so? Could the Government take up this stand? Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a

> court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In *Halsbury's Laws of England* (Fourth Edn., Vol. 9, p. 35, para 55) the law on orders improperly obtained is stated thus:
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> "The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order."
>
> Any order passed by a court of law, more so by the higher courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding.

24. Thus, it is clear that the law laid down by Supreme Court is binding on all the Govts. and authorities. Now the only question is that whether the GAD by issuing circular dated 13-1-2014 and notification dated 10-4-2013 under Section 3 of Adhiniyam, 2010 can nullify the judgment passed in the case of **Madhuri Patil (Supra)**?

25. The Supreme Court in the case of **Jaya Thakur v. Union of India,** reported in **(2023) 10 SCC 276** has held as under

> **104.** A Constitution Bench of the learned seven Judges of this Court in *Madan Mohan Pathak* v. *Union of India* was considering the question of constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. In exercise of power vested under Section 49 of the Life Insurance Corporation Act, 1956, right from 1959, various settlements were arrived at between Life Insurance Corporation ("LIC" for short) and its employees from time to time in regard to various matters relating to terms and conditions of service of Class III and Class

IV employees. The said settlements were also approved by the Board of the LIC as also by the Central Government. An Ordinance was promulgated by the President of India on 25-9-1975, called the Payment of Bonus (Amendment) Ordinance, 1975. Subsequently, the said Ordinance was replaced by the Payment of Bonus (Amendment) Act, 1976, which was brought into force with retrospective effect from the date of the Ordinance i.e. 25-9-1975. This amending law considerably curtailed the rights of the employees to bonus in industrial establishments. However, it had no impact insofar as the employees of the LIC were concerned. However, the employees of the LIC were denied the benefits which they were entitled to. In these circumstances, the All-India Insurance Employees' Association and some others filed writ petition(s) before the High Court of Calcutta for a writ of mandamus and prohibition directing the LIC to act in accordance with the terms of the Settlement dated 24-1-1974 read with the administrative instructions.

105. The learned Single Judge of the Calcutta High Court allowed the writ petition and issued a writ of mandamus and prohibition as prayed for in the said writ petition. The LIC preferred a letters patent appeal ("LPA" for short). However, during the pendency of the LPA, on 29-5-1976, the Act impugned before this Court was enacted. The effect of the enactment was to annul the benefits which the employees of the LIC were entitled to in view of the mandamus issued by the Calcutta High Court.

106. Bhagwati, J. (speaking for himself, Krishna Iyer and Desai, JJ.) observed thus : (*Madan Mohan Pathak case*, SCC p. 67, para 9)

"*9*. … We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1-4-1975 to 31-3-1976 to Class III and Class IV employees."

107. Beg, C.J. in his concurring judgment observed thus : (*Madan Mohan Pathak case*, SCC pp. 85-86, para 32)

"*32*. I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of

the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion."

108. It could thus be clearly seen that the Constitution Bench of the learned seven Judges of this Court in *Madan Mohan Pathak* clearly held that by a subsequent enactment, the writ of mandamus issued by the Calcutta High Court crystalising the rights and liabilities between the parties cannot be annulled.

109. It will also be apposite to refer to the following observation of the Constitution Bench of this Court in *Cauvery Water Disputes Tribunal, In re*, which reads thus : (SCC p. 142, para 76)

"*76*. The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

110. Relying on the aforesaid observation, this Court in *S.R. Bhagwat* v. *State of Mysore* observed thus : (SCC pp. 22 & 24, paras 12 & 15)

"*12*. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

***

15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned

provisions in a new statute. This in our view would be clearly impermissible legislative exercise."

111. In the present case also, we may point out that in *Common Cause (2021)*, this Court had not struck down any law, but had issued a mandamus which was binding on the parties before it.

112. A similar view has been taken by this Court in *Medical Council of India* v. *State of Kerala*.

113. Recently, in *Madras Bar Assn.* v. *Union of India*, a Bench of the learned three Judges of this Court, after considering the earlier judgments of this Court on the issue of permissibility of legislative override, observed thus : (SCC p. 509, para 50)

"*50*. The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

50.1. The effect of the judgments of the Court can be nullified by a legislative Act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.

50.2. The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

50.3. Nullification of mandamus by an enactment would be impermissible legislative exercise (see : *S.R. Bhagwat*). Even interim directions cannot be reversed by a legislative veto (see : *Cauvery Water Disputes Tribunal, In re* and *Medical Council of India* v. *State of Kerala*).

50.4. Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can be nullified by a legislative Act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective

> amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.

26. The Supreme Court in the case of **Pharmacy Council of India v. Rajeev College of Pharmacy,** reported in **(2023) 3 SCC 502** has held as under :

> **46.** It will also be relevant to refer to the following observation of the Constitution Bench, consisting of five Judges, of this Court in *State of M.P.* v. *Bharat Singh* : (AIR p. 1174, para 6)
>
> "*6*. … Viewed in the light of these facts the observations relied upon do not support the contention that the State or its officers may in exercise of executive authority infringe the rights of the citizens merely because the legislature of the State has the power to legislate in regard to the subject on which the executive order is issued."
>
> **47.** It is thus clear that the Constitution Bench of this Court in *Bharat Singh case* holds that the State or its officers cannot exercise its executive authority to infringe the rights of the citizens merely because the Legislature of the State has the power to legislate in regard to the subject on which the executive order is issued.
>
> **48.** It could thus be seen that the Constitution Bench holds that even an executive cannot do something to infringe the rights of the citizens by an executive action, though the State Legislature has legislative competence to legislate on the subject.

27. In the present case, the State Govt. has tried to nullify the judgment passed by Supreme Court in the case of **Madhuri Patil (Supra)** by issuing a notification thereby, merely providing the Appellate Authorities. No substantive provision of law has been incorporated by GAD, except clause 14, 14.1 and 14.2 in guidelines dated 13-1-2014, thereby making the order of rejection of Caste Certificate an

appealable one. Thus, it is held that the notification dated 10-4-2013 issued by the State Govt. under Section 3 of Adhiniyam, 2010 as well as guidelines date 13-1-2014 so far as it relates to making a provision for filing an appeal against the order rejecting the application for grant of caste certificate and also specifying the Appellate Authority and Second Appellant Authority is beyond the executive competence of the State Govt. Accordingly, clause 14, 14.1,14.2 of guidelines dated 13-1-2014 issued by GAD, State of M.P., by which appeal has been provided against the order passed by Designated Officer, thereby rejecting the application for issuance of Caste Certificate or where the application is not decided within the stipulated period and notification dated 10-4-2013 which provides for First Appeal Officer and Second Appellate Authority are hereby **quashed.** It is directed that if an application for issuance of Caste Certificate is rejected by the designated officer, then the aggrieved person can approach the High Level Caste Scrutiny Committee for redressal of his grievance.

28. It is next contended by Counsel for Petitioner, that in the present case, there is no dispute as to whether the daughter of petitioner belongs to OBC or not but the only dispute is that whether She belongs to creamy layer or not, therefore, the matter cannot be adjudicated by High Level Caste Scrutiny Committee.

29. Considered the submissions made by Counsel for the Petitioner.

30. Caste Certificate to OBC (non-creamy layer) can be issued by the designated authority. A person holding the Caste Certificate of OBC (non-creamy layer) would be entitled for various benefits. For deciding the question as to whether the aspirant belongs to creamy layer or not, the aspirant has to pass the Income/Wealth Test as provided in the Office Memorandum dated 8-9-1993 issued by Government of India. Therefore, the contention of the Counsel for the Petitioner, that the question whether an aspirant belongs to OBC (creamy layer or non-creamy layer) cannot be decided by High Level Caste Scrutiny Committee is

misconceived and is hereby rejected.

31. Faced with such a situation, it is submitted that the petitioner has already undergone 3 rounds of litigations i.e., twice his application was rejected on earlier occasion and twice the matter was remanded back. This writ petition arises out of the third round of litigation. Furthermore, the alternative remedy is not an absolute bar therefore, in view of important question of law which is involved in the present case, this petition be heard.

32. In the present case, the interpretation of clause VI of Office Memorandum dated 8-9-1993 issued by Govt of India is involved. Therefore, the Counsel for the Petitioner was also heard on merits.

Whether Clause VI of Office Memorandum dated 8-9-1993 issued by Government of India would exclude salary received by persons mentioned in Categories I, II, III, VA who are otherwise not disentitled to the benefit of reservation.

33. By Circular dated 08.09.1993, the Government of India, Ministry of Personnel, Public Grievances & Pensions, had observed that in case if the annual income of the person is more than Rs.One Lac, then he would be in the category of creamy layer. It is not out of place to mention here that the annual income of Rs.One Lac has now been enhanced to Rs.Eight Lacs. The Schedule appended to the Office Memorandum dated 08.09.1993 reads as under:

SCHEDULE

Description of category		**To whom rule of exclusion will apply**
1	2	3
I.	CONSTITUTIONAL POSTS	Son(s) and daughter(s) of (a) President of India; (b) Vice President of India; (c) Judges of Supreme court and of the High Courts; (d) Chairman & Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller &

		Auditor General of India; (e) persons holding Constitutional positions of like nature.
II	SERVICE CATEGORY	Sons (s) and daughter (s) of
	A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).	(a) parents, both of whom are Class I officers; (b) parents, either of whom is a Class I officer; (c) parents, both of whom are Class I officers, but one of them dies or suffers permanent incapacitation. (d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years. (e) parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years. Provided that the rule of exclusion shall not apply in the following cases: (a) Sons and daughters of parents either of whom or both of whom are Class I officers and such parent(s) dies/die or suffer permanent incapacitation. (b) A lady belonging to OBC category has got married to a Class-I officer, and may herself like to apply for a job.
	B. *Group B/Class II officers of the Central & State Services (Direct Recruitment)*	Son(s) and daughter(s) of (a) parents both of whom are Class I officers. (b) parents of whom only the husband is a Class II officer and he gets into Class I at the age of 40 or earlier. (c) parents both of whom are Class II officers and one of them dies or suffers

		permanent incapacitation and either one of them has had the benefit of employment in any International Organization like UN, IMF, World Bank, etc. for a period of not less than 5 years before such death or permanent incapacitation; (d) parents of whom the husband is a Class I officer (direct recruit or pre-forty promoted) and the wife is a Class II officer and the wife dies; or suffers permanent incapacitation; and (e) parents, of whom the wife is a Class I officer (Direct Recruit or pre-forty promoted) and the husband is a Class II officer and the husband dies or suffers permanent incapacitation Provided that the rule of exclusion shall not apply in the following cases: Sons and daughters of (a) Parents both of whom are Class II officers and one of them dies or suffers permanent incapacitation. (b) Parents, both of whom are Class II officers and both of them die or suffer permanent incapacitation, even though either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation.
	C. *Employees in Public Sector Undertakings etc.*	The criteria enumerated in A & B above in this Category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSUs, Banks, Insurance Organisa-tions, Universities, etc. and also to equivalent or comparable posts and positions under private employment, Pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI below will apply to the officers in these Institutions.
III	ARMED FORCES INCLUDING	Son(s) and daughter(s) of parents either or

	PARAMILITARY FORCES (Persons holding civil posts are not included)	both of whom is or are in the rank of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces; Provided that:- (i) if the wife of an Armed Forces Officer is herself in the Armed Forces (i.e., the category under consideration) the rule of exclusion will apply only when she her-self has reached the rank of Colonel; (ii) the service ranks below Colonel of hus-band and wife shall not be clubbed together; (iii) If the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion unless she falls in the service category under item No. II in which case the criteria and conditions enumerated therein will apply to her independently.
IV.	PROFESSIONAL CLASS AND THOSE ENGAGED IN TRADE AND INDUSTRY	
	(I) Persons engaged in profession as a doctor, lawyer, chartered accountant, Income-Tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status	Criteria specified against Category VI will apply:-
	(II) Persons engaged in trade. business and industry.	Criteria specified against Category VI will apply:- Explanation : (i) Where the husband is in some profes-sion and the wife is in a Class II or lower grade employment, the income/wealth test will apply only on the basis of the husband's income. (ii) If the wife is in any profession and the husband is in employment in a Class II or lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the hus-band's income

		will not be clubbed with it.
V.	*PROPERTY OWNERS* A. *Agricultural holdings*	Son(s) and daughter(s) of persons belonging to a family (father, mother and minor children) which owns (a) only irrigated land which is equal to or more than 85% of the statutory area, or (b) both irrigated and unirrigated land, as follows: (i) The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by converting the unirrigated land on the basis of the conver-sion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land and if after such club-bing together the total area in terms of irrigated land is 80% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur. (ii) The rule of exclusion will not apply if the land holding of a family is exclu-sively unirrigated.
	B. *Plantations* (i) Coffee, tea, rubber, etc.	Criteria of income/wealth specified in Category VI below will apply.
	(ii) Mango, citrus, apply plantations etc.	Deemed as agricultural holding and hence criteria at A Above under this Category will apply.
	C. *Vacant land and/or buildings in urban areas or urban agglomerations*	Criteria specified in Category VI below will apply. Explanation: Building may be used for residential, industrial or commercial purpose and the like two or more such

		purposes.
VI	*INCOME/WEALTH TEST*	Son(s) and daughter(s) of (a) Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years. (b) Persons in Categories I, II, III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above. Explanation: (i) Income from salaries or agricultural land shall not be clubbed; (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interrugnum may be less.
	Explanation: Wherever the expression "permanent incapacitation" occur in this schedule, it shall mean incapacitation which results in putting an officer out of service.	

34. First category deals with Constitutional Posts which are exclusively excluded. II (A) deals with Service Category of Class I/Group A Officers; II(B) deals with Group B/Class II Officers; II (C) deals with deals with employees in Public Sector Undertakings. III deals with Armed Forces including Paramilitary Forces. IV deals with Professional Class and those engaged in Trade and Industry, V deals with property owners which has been categorized in three sub-categories viz. (A) Agricultural Holdings (B) Plantations and (C) Vacant Land and/or buildings in urban areas or urban agglomerations and (VI) deals with

Income/Wealth Test.

35. It is submission of counsel for petitioner that as per category VI which deals with Income/Wealth Test, the income from salary or agricultural land shall not be clubbed in case of persons in categories I, II, III and V(A) who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

36. This Court is concerned about the interpretation of category VI of the aforementioned O.M.

37. Category VI deals with two aspects i.e., income and wealth.

38. Category VI (a) deals with income and VI (b) deals with wealth.

Income has been defined in Income Tax Act which reads as under :

> **2 (24) "income"** includes—
> (*i*) profits and gains;
> (*ii*) dividend;
> (*ii-a*) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (*iv*) or sub-clause (*v*) or by any university or other educational institution referred to in sub-clause (*iii-ad*) or sub-clause (*vi*) or by any hospital or other institution referred to in sub-clause (*iii-ae*) or sub-clause (*vi-a*)] of clause (23-C), of Section 10 or by an electoral trust.
> *Explanation.*—For the purposes of this sub-clause, "trust" includes any other legal obligation;
> (*iii*) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of Section 17;
> (*iii-a*) any special allowance or benefit, other than perquisite included under sub-clause (*iii*), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;
> (*iii-b*) any allowance granted to the assessee either to meet his personal

expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;

(*iv*) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(*iv-a*) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (*iii*) or clause (*iv*) of sub-section (1) of Section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;

(*v*) any sum chargeable to income tax under clauses (ii) and (iii) of Section 28 or Section 41 or Section 59;

(*v-a*) any sum chargeable to income tax under clause (*iii-a*) of Section 28;

(*v-b*) any sum chargeable to income tax under clause (*iii-b*) of Section 28;

(*v-c*) any sum chargeable to income tax under clause (*iii-c*) of Section 28;

(*v-d*) the value of any benefit or perquisite taxable under clause (*iv*) of Section 28;

(*v-e*) any sum chargeable to income tax under clause (*v*) of Section 28;

(*vi*) any capital gains chargeable under Section 45;

(*vii*) the profits and gains of any business of insurance carried on by a mutual insurance company or by a cooperative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

(*vii-a*) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;

(*viii*) [*Omitted*]

(*ix*) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling

or betting of any form or nature whatsoever;

Explanation.—For the purposes of this sub-clause,—

(*i*) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(*ii*) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;

(*x*) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees;

(*xi*) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to clause (10-D) of Section 10;

(*xii*) *any sum referred to in clause* (*v-a*) *of Section 28*;

(*xiia*) the fair market value of inventory referred to in clause (*via*) of Section 28;

(*xiii*) any sum referred to in clause (*v*) of sub-section (2) of Section 56;

(*xiv*) any sum referred to in clause (*vi*) of sub-section (2) of Section 56;

(*xv*) any sum of money or value of property referred to in clause (vii) or clause (*vii-a*) of sub-section (2) of Section 56;

(*xvi*) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (*vii-b*) of sub-section (2) of Section 56;

(*xvii*) any sum of money referred to in clause (*ix*) of sub-section (2) of Section 56;

(*xvii-a*) any sum of money or value of property referred to in clause (*x*) of sub-section (2) of Section 56;

(*xvii-b*) any compensation or other payment referred to in clause (*xi*) of sub-section (*2*) of Section 56;

(*xvii-c*) any sum referred to in clause (*xii*) of sub-section (2) of Section 56;

(*xvii-d*) any sum referred to in clause (*xiii*) of sub-section (2) of Section 56;

(*xviii*) assistance in the form of a subsidy or grant or cash incentive or

> duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,—
> (*a*) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of Section 43; or
> (*b*) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;

Net Wealth has been defined in Wealth Tax Act, which reads as under :

> **2(m) "net wealth"** means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee 3 on the valuation date which have been incurred in relation to the said assets;

39. Since, heading of Category VI is Income/Wealth, therefore, these two words i.e., income and wealth have to be given different meaning and income would not include wealth and vice versa. The Supreme Court in the case of **S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra,** reported in **1980 Supp SCC 53** has held as under:

> 13……This conclusion is reinforced by the title of Chapter III "*Trial of Election Petitions"* because it is legitimate and indeed proper to have recourse to heading and sub-heading given to a group of sections in an Act of Parliament to find guidance for the construction of the words in a statute (see *R.* v. *Board of Trader*) coupled with this one can advantageously refer to a known canon of construction that every section of a statute is to be construed with reference to the context and other sections of the Act, so as, as far as possible, to make a consistent enactment of the whole statute.

40. The Supreme Court in the case of **Union of India v. ABN Amro Bank,** reported in **(2013) 16 SCC 490** has held as under:

> **38.....**The heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning.....

41. In case of any ambiguity, the heading and sub-heading can be considered for interpretation of statute. However, in the present case the Category VI Income/Wealth can be treated as an external aid to consider and interpret clause 3 of Office Memorandum dated 8-9-1993. Clause 3 of Category VI is in two parts i.e., sub-clause (a) deals with Income and sub-clause (b) deals with Wealth.

42. At the cost of repetition sub-clause (a) and (b) of Category VI are reproduced once again which reads as under:

> **Category VI (a)** Persons having gross annual income of Rs. 8 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.
>
> **(b)** Persons in Categories I,II,III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.
>
> Explanation :
> (I) Income from salaries or agricultural land shall not be clubbed ;
> (II) The Income criteria in terms of rupees will be modified taking into account the change in its value every three years. If the situations, however, so demands, the interrugnum may be less.

43. In Category VI (a) the word “or” has been issued and not “and”. Where the words are clear and unambiguous, then plain meaning has to be given. Word “and” can be read as “or” or vice versa only when the interpretation leads to absurdity or to give effect to the manifest intention of the Legislature as disclosed from the context.

44. Now, before proceeding further, this Court would like to consider the

purpose of bifurcation of OBC into creamy layer and non-creamy layer.

45. The Supreme Court in the case of **Indra Sawhney And Others Vs. Union of India and Others** reported in **1992 Supp (3) SCC 217** has held as under :

> "*520*. Society does not remain static. The industrialisation and the urbanisation which necessarily followed in its wake, the advance on political, social and economic fronts made particularly after the commencement of the Constitution, the social reform movements of the last several decades, the spread of education and the advantages of the special provisions including reservations secured so far, have all undoubtedly seen at least some individuals and families in the backward classes, however small in number, gaining sufficient means to develop their capacities to compete with others in every field. That is an undeniable fact. Legally, therefore, they are not entitled to be any longer called as part of the backward classes whatever their original birthmark. It can further hardly be argued that once a backward class, always a backward class. That would defeat the very purpose of the special provisions made in the Constitution for the advancement of the backward classes, and for enabling them to come to the level of and to compete with the forward classes, as equal citizens. On the other hand, to continue to confer upon such advanced sections from the backward classes the special benefits, would amount to treating equals unequally violating the equality provisions of the Constitution. Secondly, to rank them with the rest of the backward classes would equally violate the right to equality of the rest in those classes, since it would amount to treating the unequals equally. What is more, it will lead to perverting the objectives of the special constitutional provisions since the forwards among the backward classes will thereby be enabled to lap up all the special benefits to the exclusion and at the cost of the rest in those classes, thus keeping the rest in perpetual backwardness. The object of the special constitutional provisions is not to uplift a few individuals and families in the backward classes but to ensure the advancement of the backward classes as a whole. Hence, taking out the forwards from among the backward classes is not only permissible but obligatory under the Constitution. However, it is necessary to add that just as the backwardness of the backward groups cannot be measured in terms of the forwardness of the forward groups, so also the forwardness of the forwards among the backward classes cannot be measured in terms of the backwardness of the backward sections of the said classes. It has to be judged on the basis of the social capacities gained by them to

compete with the forward classes. So long as the individuals belonging to the backward classes do not develop sufficient capacities of their own to compete with others, they can hardly be classified as forward. … (SCC p. 553, para 520)

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629. More backward and backward is an illusion. No constitutional exercise is called for it. What is required is practical approach to the problem. The collectivity or the group may be backward class but the individuals from that class may have achieved the social status or economic affluence. Disentitle them from claiming reservation. Therefore, while reserving posts for backward classes, the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered to be backward. What should be that limit can be determined by the appropriate State. Income apart, provision should be made that wards of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolisation of the services reserved for backward classes by a few. Creamy layer, thus, shall stand eliminated. And once a group or collectivity itself is found to have achieved the constitutional objective then it should be excluded from the list of backward class. Therefore,

(*1*) no reservation can be made on economic criteria;

(*2*) it may be under Article 16(4) if such class satisfies the test of inadequate representation;

(*3*) exclusion of creamy layer is a social purpose. Any legislative or executive action to remove such persons individually or collectively cannot be constitutionally invalid. (SCC pp. 626-27, para 629)

* * *

790. 'Means test' in this discussion signifies imposition of an income limit, for the purpose of excluding persons (from the backward class) whose income is above the said limit. This submission is very often referred to as the 'creamy layer' argument. Petitioners submit that some members of the designated backward classes are highly advanced socially as well as economically and educationally. It is submitted that they constitute the forward section of that particular backward class—as forward as any other forward class member—and that they are lapping up all the benefits of reservations meant for that class, without allowing

the benefits to reach the truly backward members of that class. These persons are by no means backward and with them a class cannot be treated as backward. It is pointed out that since *Jayasree* almost every decision has accepted the validity of this submission.

791. On the other hand, the learned counsel for the States of Bihar, Tamil Nadu, Kerala and other counsel for respondents strongly oppose any such distinction. It is submitted that once a class is identified as a backward class after applying the relevant criteria including the economic one, it is not permissible to apply the economic criteria once again and sub-divide a backward class into two sub-categories. Counsel for the State of Tamil Nadu submitted further that at one stage (in July 1979) the State of Tamil Nadu did indeed prescribe such an income limit but had to delete it in view of the practical difficulties encountered and also in view of the representations received. In this behalf, the learned counsel invited our attention to Chapter 7-H (pages 60 to 62) of the Ambashankar Commission (Tamil Nadu Second Backward Classes Commission) Report. According to the respondents the argument of 'creamy layer' is but a mere ruse, a trick, to deprive the backward classes of the benefit of reservations. It is submitted that no member of backward class has come forward with this plea and that it ill becomes the members of forward classes to raise this point. Strong reliance is placed upon the observations of Chinnappa Reddy, J. in *Vasanth Kumar* to the following effect : (SCC p. 763, para 72)

'*72*. … One must, however, enter a caveat to the criticism that the benefits of reservation are often snatched away by the top creamy layer of backward class or caste. That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layer of society itself? Seats reserved for the backward classes are taken away by the top layers amongst them on the same principle of merit on which the unreserved seats are taken away by the top layers of society. How can it be bad if reserved seats and posts are snatched away by the creamy layer of backward classes, if such snatching away of unreserved posts by the top creamy layer of society itself is not bad?'

792. In our opinion, it is not a question of permissibility or desirability of such test but one of proper and more appropriate identification of a class—a backward class. The very concept of a class denotes a number of persons having certain common traits which distinguish them from

the others. In a backward class under Clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line—how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the other. The basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement. Let us illustrate the point. A member of backward class, say a member of carpenter caste, goes to Middle East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the backward class? Are his children in India to be deprived of the benefit of Article 16(4)? Situation may, however, be different, if he rises so high economically as to become'say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status. Even otherwise there are several practical difficulties too in imposing an income ceiling. For example, annual income of Rs 36,000 may not count for much in a city like Bombay, Delhi or Calcutta whereas it may be a handsome income in rural India anywhere. The line to be drawn must be a realistic one. Another question would be, should such a line be uniform for the entire country or a given State or should it differ from rural to urban areas and so on. Further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. While the income of a person can be taken as a *measure* of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other. The income limit must be such as to mean and signify social advancement. At the same time, it must be recognised that there are certain positions, the occupants of which can be treated as socially advanced without any further enquiry. For example, if a member of a designated backward class becomes a member of IAS or IPS or any other all-India service, his status in society (social status)

rises; he is no longer socially disadvantaged. His children get full opportunity to realise their potential. They are in no way handicapped in the race of life. …

(emphasis in original)

793. Keeping in mind all these considerations, we direct the Government of India to specify the basis of exclusion—whether on the basis of income, extent of holding or otherwise—of 'creamy layer'. This shall be done as early as possible, but not exceeding four months. On such specification persons falling within the net of exclusionary rule shall cease to be the members of the Other Backward Classes (covered by the expression 'backward class of citizens') for the purpose of Article 16(4). The impugned Office Memorandums dated 13-8-1990 and 25-9-1991 shall be implemented subject only to such specification and exclusion of socially advanced persons from the backward classes contemplated by the said OM. In other words, after the expiry of four months from today, the implementation of the said OM shall be subject to the exclusion of the 'creamy layer' in accordance with the criteria to be specified by the Government of India and not otherwise.

46. The Supreme Court in the case o*f* **Ashoka Kumar Thakur v. Union of India,** reported in **(2008) 6 SCC 1** has held as under :

VIII CONCEPT OF CREAMY LAYER (RULE OF EXCLUSION FOR THE PURPOSE OF RECRUITMENT)

52. In pursuance to the Supreme Court's Direction, the Government of India had appointed an Expert Committee in February 1993 to specify the basis, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (creamy layer) from the OBCs.

53. On the basis of its recommendations, the Government of India issued an O.M. dated 8-9-1993 providing the rule of exclusion (creamy layer) applicable to the children of the persons of the schedule (of the OM). It also provides that the children of persons having gross annual income of Rs one lakh or above for a period of three consecutive years falls within the creamy layer. This income limit has now been raised on 9-4-2004 from Rs one lakh to Rs 2.5 lakh for determining the creamy layer amongst OBCs.

54. The concept of creamy layer is being followed for purposes of public employment by State Governments/UT administrations. Many

State Governments/UT administrations have adopted the criteria formulated by the Central Government and others have devised their own criteria.

* * * *

169. In *Indra Sawhney case* Jeevan Reddy, J. has observed : (SCC p. 724, para 792)

"*792*. In our opinion, it is not a question of permissibility or desirability of such test but one of proper and more appropriate identification of a class—a backward class. The very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. In a backward class under Clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward."

170. It is to be understood that "creamy layer" principle is introduced merely to exclude a section of a particular caste on the ground that they are economically advanced or educationally forward. They are excluded because unless this segment of caste is excluded from that caste group, there cannot be proper identification of the backward class. If the "creamy layer" principle is not applied, it could easily be said that all the castes that have been included among the socially and educationally backward classes have been included exclusively on the basis of caste. Identification of SEBC for the purpose of either Articles 15(4), 15(5) or 16(4) solely on the basis of caste is expressly prohibited by various decisions of this Court and it is also against Article 15(1) and Article 16(1) of the Constitution. To fulfil the conditions and to find out truly what is socially and educationally backward class, the exclusion of "creamy layer" is essential.

171f***.** It may be noted that the "creamy layer" principle is applied not as a general principle of reservation. It is applied for the purpose of identifying the socially and educationally backward class. One of the main criteria for determining SEBC is poverty. If that be so, the principle of exclusion of "creamy layer" is necessary. Moreover, the majority in *Indra Sawhney case* upheld the exclusion of "creamy layer" for the purpose of reservation in Article 16(4). Therefore, we are bound by the larger Bench decision of this Court in *Indra Sawhney case* and it

cannot be said that the "creamy layer" principle cannot be applied for identifying SEBCs. Moreover, Articles 15(4) and 15(5) are designed to provide opportunities in education thereby raising educational, social and economical levels of those who are lagging behind and once this progress is achieved by this section, any legislation passed thereunder should be deemed to have served its purpose. By excluding those who have already attained economic well-being or educational advancement, the special benefits provided under these clauses cannot be further extended to them and, if done so, it would be unreasonable, discriminatory or arbitrary, resulting in reverse discrimination.

172. Sawant, J. also made observation in *Indra Sawhney case* to ensure removal of "creamy layer". He observed : (SCC p. 553, para 520)

"*520*. … at least some individuals and families in the backward classes … gaining sufficient means to develop their capacities to compete with others in every field. … Legally, therefore, they are not entitled to be any longer called as part of the backward classes whatever their original birthmark. … to continue to confer upon such advanced sections from the backward classes the special benefits, would amount to treating equals unequally violating the equality provisions of the Constitution. Secondly, to rank them with the rest of the backward classes would equally violate the right to equality of the rest in those classes, since it would amount to treating the unequals equally. … it will lead to perverting the objectives of the special constitutional provisions since the forwards among the backward classes will thereby be enabled to lap up all the special benefits to the exclusion and at the cost of the rest in those classes, thus keeping the rest in perpetual backwardness."

173. All these reasonings are equally applicable to the reservation or any special action contemplated under Article 15(5). Therefore, we are unable to agree with the contention raised by the respondent's learned counsel that if "creamy layer" is excluded, there may be practically no representation for a particular backward class in educational institutions because the remaining members, namely, the non-creamy layer, may not have risen to the level or standard necessary to qualify to get admission even within the reserved quota. If the creamy layer is not excluded, the identification of SEBC will not be complete and any SEBC without the exclusion of "creamy layer" may not be in accordance with Article 15(1) of the Constitution.

47. Thus, creamy layer is to exclude that section of OBC which is

economically, socially and educationally advanced, so that economically, socially and educationally backward class of OBC can be identified. Poverty is also one of the criteria for identifying the non-creamy layer of OBC.

48. Therefore, the Category VI has to be interpreted by keeping the above mentioned purpose in mind.

49. Category VI(a) deals with two aspects i.e., where the income is more than Rs. 8 lacs or where the wealth is beyond the exempted limits. There is no explanation in Category VI(a).

50. Category VI(b) deals with persons in categories I,II,III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria. The use of words "but have income from other sources of wealth which will bring them within the income/wealth criteria" is of great importance. This class of person would include only those persons who are having income from salary and agricultural income but are also having income from other sources of wealth. To understand the situation, this Court would like to give the following examples :

(1) Yearly income of a person from his salary is 7 lacs and he also has an income of Rs. 1.5 lacs from other sources of wealth and thus, his total income would come to Rs. 8.5 lacs which would exceed Rs. 8 lacs. To meet out such eventuality, the Explanation has been given which provides that salary and agricultural income shall be excluded.

(2) Another example can be that a person is holding the highest post in a State Bureaucracy and is drawing the yearly income of Rs. 40 lacs and his yearly income from other sources of wealth is Rs. 7 lacs. If the arguments advanced by Petitioner is accepted, then it would mean that although the person is a highly paid officer of the State but, still he

would fall within the category of non-creamy, because his income from other sources of wealth is only 7 lacs.

(3) Third example can be of a person, who is not in employment and his yearly income from other sources of wealth is Rs. 8.5 lacs. Therefore, he would fall in the category of creamy layer.

51. If examples (2) and (3) are read together, then it would mean that a person who is economically advanced would fall in the category of non-creamy layer and a person whose is not in employment, but his yearly income from other sources of wealth is only Rs. 8.5 lacs, then he would fall in the category of creamy layer.

52. The Govt. of India has deliberately not given any explanation to Category VI(a) and the explanation to Category VI (b) cannot be read in the context of Category VI(a), otherwise, it would lead to absurdity as pointed out by this Court by giving examples. It is well established principle of law that any interpretation which leads to absurdity should be avoided.

53. The Supreme Court in the case of **Eera Vs. State (NCT of Delhi)** reported in **(2017) 15 SCC 133** has held as under :

> **41.** On a proper analysis of the aforesaid authority, it is clear as crystal that when two constructions are reasonably possible, preference should go to one which helps to carry out the beneficent purpose of the Act; and that apart, the said interpretation should not unduly expand the scope of a provision. Thus, the Court has to be careful and cautious while adopting an alternative reasonable interpretation. The acceptability of the alternative reasonable construction should be within the permissible ambit of the Act. To elaborate, introduction of theory of balance cannot be on thin air and in any case, the courts, bent with the idea to engulf a concept within the statutory parameters, should not pave the path of expansion that the provision by so stretch of examination envisages.
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> * * * *
>
> **64.** I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of

> the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the "colour", "content" and the "context of statutes" and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

54. The Supreme Court in the case of **H.S. Vankani v. State of Gujarat,** reported in **(2010) 4 SCC 301** has held as under :

> **43.** It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.
>
> **44.** In this connection reference may be made to the judgment in *R (Edison First Power Ltd.)* v. *Central Valuation Officer* wherein Lord Millet said: (All ER pp. 116-17)
>
> "*116*. … The courts will presume that Parliament did not intend a statute

to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.

117. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it…."

45. Reference may also be made to the judgment in *Andhra Bank* v. *B. Satyanarayana* wherein this Court has held: (SCC p. 662, para 14)

"*14*. A machinery provision, it is trite, must be construed in such a manner so as to make it workable having regard to the doctrine '*ut res magis valeat quam pereat*'."

46. In *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* this Court held as follows: (SCC p. 754, para 118)

"*118*. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle '*ut res magis valeat quam pereat*'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it."

47. Reference may also be made to the decisions in *Madhav Rao Jivaji Rao Scindia* v. *Union of India*, *Union of India* v. *B.S. Agarwal* and *Paradise Printers* v. *UT of Chandigarh*.

48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule-making authority also expects rule framed by it to be made workable and never visualises absurd results……

55. The Supreme Court in the case of **American Home Products Corpn. v. Mac Laboratories (P) Ltd.,** reported in **(1986) 1 SCC 465** has held as under :

66…….It is a well-known principle of interpretation of statutes that a

> construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly (see: *M. Pentiah* v. *Muddala Veeramallappa*). The Division Bench of the Calcutta High Court saw the absurdity, inconvenience and hardship resulting from the construction which was placed by it upon Section 48(2), as is shown by the passages from its judgment reproduced earlier. It, however, forgot the above principle of construction and failed to give to the legal fiction enacted by Section 48(2) its full force and effect.

56. The Supreme Court in the case of **Institute of Chartered Accountants of India v. Vimal Kumar Surana,** reported in **(2011) 1 SCC 534** has held as under:

> **24.** Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrongdoer by filing the first information report or complaint under the relevant provisions of CrPC.

57. Thus, it is held that Explanation to Category VI(b) cannot be read in the context of Category VI(a).

58. Accordingly, it is held that the authorities below did not commit any mistake by rejecting the application for issuance of Caste Certificate in favour of daughter of petitioner. *Ex consequenti*, the orders passed by the authorities below are hereby affirmed though on a slightly different ground.

59. The Petition fails and is hereby ***dismissed.***

(G.S. Ahluwalia)
Judge

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