



2026:AHC-LKO:41629-DB

A.F.R.
Reserved on 12.03.2026
Delivered on 22.06.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 4422 of 2012

Chandra Shekhar Nishad

.....Petitioner(s)

Versus

Union of India Through Cabinet Secy.Central Sectt.New Delhi

.....Respondent(s)

Counsel for Petitioner(s) : J.R.nishad, Anurag Shukla, Surendra
Mohan Gandhi
Counsel for Respondent(s) : C.S.C., A.S.g.

Court No. - 5

HON'BLE ALOK MATHUR, J.
HON'BLE AMITABH KUMAR RAI, J.

(Delivered by Hon'ble Amitabh Kumar Rai,J.)

1. Heard Shri Anurag Shukla, learned Senior Counsel for the petitioner, Shri Akhilesh Srivastava, learned Standing Counsel for the respondent nos.3 to 5 and Shri Varun Pandey, learned counsel for respondent nos.1 and 2.

2. The present writ petition has been filed seeking following reliefs :

(i) Issue a writ, order or direction in the nature of mandamus by commanding the opposite parties with direction to include the communities of Mallah, Majhwar, in the list of scheduled caste list as per law, constitution and order of this Court passed in Writ Petition No.9312 of 1988

contained as Annexure No.7 to this writ petition and be also directed to the opposite parties to provide facilities of scheduled caste to the aforementioned communities by fixing quota as per quantity.

(ii) Issue a writ, order or direction in the nature of mandamus by commanding the opposite parties with direction that a Gazat a notification of this effect be also made in compliance of the order of this Court within stipulated period as fixed by Hon'ble Court in the interest of justice.

3. Learned Standing Counsel, at the outset, has raised an objection regarding the relief claimed by the petitioner, submitting that the relief sought in the instant writ petition amounts to legislative enactment, as a caste can only be included by Parliament under Article 341 of the Constitution of India through law made under the Constitution (Scheduled Castes) Order, 1950. It has been submitted that in view of the Constitution Bench judgment of the Hon'ble Supreme Court in **State of Maharashtra vs. Milind and Others** reported in **2001 (1) SCC 4**, it is not permissible to issue a direction declaring any caste as a Scheduled Caste. It has been submitted that for the aforesaid reasons, the instant writ petition, insofar as the relief sought is concerned, is not maintainable and is liable to be dismissed as infructuous.

4. Countering the aforesaid objection, the learned Senior Counsel appearing for the petitioner submitted that due to inadvertence, the relief has not been properly construed and the intention behind filing the present writ petition is to seek treatment of the communities of **Nishad, Kashyap, Kewat, Mallah and Bind** as synonyms or generic names of the caste Majhwar.

5. It has been submitted by learned Senior Counsel on behalf of the petitioner that in appropriate cases, the relief can be moulded in the interest of justice, placing reliance on the judgments rendered by the Hon'ble Supreme Court in **Food Corporation of India vs. S. N.**

Nagarkar reported in (2002) 2 SCC 475, **State of Rajasthan vs. Hindustan Sugar Mills Ltd. and Others** reported in (1988) 3 SCC 449 and **B. R. Ramabhadriah vs. Secretary, Food and Agriculture Department, Andhra Pradesh and Others** reported in (1981) 3 SCC 528.

6. It has been submitted by learned counsel for the petitioner that even the State Government, vide Notification No.4/1/2002-Ka-2/2005 dated 10.10.2005 issued in exercise of powers under Section 13 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as the “U.P. Act of 1994”) made amendments whereby the castes of **Kewat, Mallah, Nishad and Bind** were held entitled to the benefits available to Scheduled Castes instead of those available to the Backward Class under the U.P. Act of 1994.

7. It has been submitted that the Appendices to Census Manual, Part-I issued for Uttar Pradesh issued by the Census of India, 1961 under Appendix-F, provide for List I which contains the names of Scheduled Castes along with their synonyms or generic names, wherein at Serial No.51, the caste Majhwar has been referred with the following synonyms or generic names: Manjhi (Districts Unnao and Pratapgarh); Mujbir or Mujabir (District Badaun); Rajgond (District Mirzapur); Mallah (Districts Agra, Etawah, Unnao, and Lucknow); Kewat (District Unnao); and Gond, Majhwar. It has been further submitted that as per Aadarsh Hindi Shabd-kosh published by Bhargav Book Depo, Varanasi, the word “Manjhi” has been described as meaning a Boatman, Mallah or Kewat.

8. The thrust of the argument is that the castes Nishad, Kewat, Mallah and Bind are synonyms of the caste Majhwar, as they belong to the same community and are boatmen engaged in the same profession.

9. Reliance has been placed by learned counsel for the petitioner on the Constitution Bench judgment of the Hon'ble Supreme Court in **B. Basavalingappa vs. D. Munichinnappa and others** reported in AIR 1965 SC 1269 in which Hon'ble Supreme Court, after due consideration,

held that “Voddar” caste is the same as “Bhovi” caste, which is notified as a Scheduled Caste and a person belonging to “Voddar” caste is entitled to claim that he belongs to “Bhovi” caste. Further reliance has been placed on the judgment and order dated 27.02.2018 passed by the Hon'ble Supreme Court in **Civil Appeal No.7362 of 2013, State of Orissa vs. Dasarathi Meher** in which Hon'ble Supreme Court held that members of “Kuli” community are also entitled to be treated as Scheduled Tribes and “Kulis” have been recognized as Scheduled Tribes. In the aforesaid judgment, Hon'ble Supreme Court, after appreciating the material placed before it, came to the conclusion that there is no separate community by the name of “Kulis” and both the communities, “Kuli” and “Kulis” are the same.

10. Learned Senior Counsel appearing for the petitioner, on the strength of the documents referred to hereinabove as well as the judgments in the cases of **Dasarathi Meher (supra)** and **B. Basavalingappa (supra)**, has submitted that the castes Nishad, Kewat, Mallah and Bind are synonyms of the caste Majhwar and as such, are entitled to the same benefits as persons belonging to the caste Majhwar, which has been declared a Scheduled Caste and finds place at Entry No.52 of the Constitution (Scheduled Castes) Order, 1950.

11. On the other hand, learned Standing Counsel, relying on the case of **Milind (supra)**, particularly paragraph 36 of the judgment, has submitted that it is not permissible to hold any enquiry to declare that any caste or sub-caste can be included against an entry in which such caste or sub-caste is not specifically mentioned in the Constitution (Scheduled Tribes) Order, 1950.

12. It has been further submitted that it is not permissible to say that any caste, sub-caste, part of or group of any caste or community is synonymous with the one mentioned in the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, as they cannot be modified.

13. Having heard learned counsel for the parties, the issue for consideration is whether the castes Nishad, Kashyap, Kewat, Mallah and

Bind can be termed as synonyms of the caste Majhwar, which has been declared a Scheduled Caste and finds place at Serial No.52 in the Constitution (Scheduled Castes) Order, 1950 and whether they are entitled to the same benefits.

14. Articles 341 and 342 of the Constitution of India empower the President to issue a public notification specifying castes, races or tribes or parts of or groups within castes, races or tribes, which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be.

15. Articles 341 & 342 of the Constitution of India reads as under :

“341. Scheduled Castes.

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

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

342. Scheduled Tribes

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification specify the tribes or tribal communities

or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

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

16. The object of the aforesaid Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to the social and educational backwardness from which they have been suffering for a considerable length of time. The words "castes" and "tribes" in the expressions "Scheduled Castes" and "Scheduled Tribes" are used in the sense of the definitions contained in Articles 366(24) and 366(25) of the Constitution. Thus, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe, only if it is included in the Presidential Orders issued under Articles 341 and 342 of the Constitution. In exercise of such power, President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950.

17. The plain language and clear terms of Articles 341 and 342 indicate that the President under clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification, specify the castes, races or tribes or parts of or groups within the castes, races or tribes, which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to that State or Union Territory, as the case may be. Under clause (2) of the said Articles, a notification issued under clause (1) cannot be varied by any subsequent

notification except by a law made by Parliament. Meaning thereby, Parliament alone is competent, by law, to include in or exclude a caste or tribe from the list of Scheduled Castes and Scheduled Tribes specified in the notifications issued under clause (1) of the said Articles.

18. While including castes and tribes in the Presidential Orders, the President is authorized to limit the notification to parts or groups within a caste or tribe depending upon their educational and social backwardness. It is permissible that only parts or groups within them be specified and further that such castes or tribes be specified in relation to parts of a State and not the entire State, if it is considered necessary to do so having regard to social and educational backwardness. The States had the opportunity to present their views through the Governors when consulted by the President in relation to the castes or tribes or parts or groups within them either in relation to the entire State or parts thereof.

19. The object of clause (1) of Articles 341 and 342 was to avoid disputes regarding whether a caste or tribe is a Scheduled Caste or Scheduled Tribe for the purposes of the Constitution. Whether a particular caste or tribe is a Scheduled Caste or Scheduled Tribe, as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 is to be determined by looking at the entries as they stand. Clause (2) of the said Articles does not permit anyone to seek modification of the said Orders by leading evidence to establish that a caste or tribe other than the one mentioned in the Order should be deemed to be a Scheduled Caste or Scheduled Tribe, as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342.

20. It can be seen from the entries in the Schedules pertaining to each State that whenever a caste or tribe has another name, the same is mentioned in brackets after it in the Schedules. In this view, it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste or tribe is a Scheduled Caste or Scheduled Tribe for the purposes of the Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of

Articles 341 and 342 cannot be varied by any subsequent order or notification, even by the President, except by a law made by Parliament. Thus, it cannot be said that the State Governments or any other authority, court or tribunal are vested with any power to modify or vary the said Orders. No inquiry is permissible and no evidence can be led for establishing that a particular caste or part or group within a caste or tribe is included in the Presidential Order, if it is not expressly included therein. Since any exercise or attempt to amend the Presidential Order, except as provided in clause (2) of Articles 341 and 342, is futile, it is neither permissible nor useful to hold any inquiry or lead any evidence in that regard.

21. The Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **B. Basavalingappa (supra)** referred by learned counsel for the petitioner has specifically held as under in paragraph 6 :

"It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and therefore must be deemed to be included in Caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order [see Aray (Mala) Dakkal (Dokkalwar) etc.]. Therefore, generally speaking it would not be open to any person to lead evidence to establish that Caste B (in the example quoted above) is part of Caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste. is not mentioned in brackets after the Bhovi caste in the Order."

(Emphasis Supplied)

22. Another Constitution Bench judgment of the Hon'ble Supreme Court, in the later decision in the case of **Bhaiya Lal v. Harikishan Singh** reported in **AIR 1965 SC 1557**, rejected the plea of the appellant that although he did not belong to the Chamar caste, he could still claim the same status on the ground that he belonged to the Dohar caste, which is a sub-caste of the Chamar caste. Referring to the case of **B. Basavalingappa (supra)**, Hon'ble Supreme Court held that an enquiry of that kind would not be permissible in light of the provisions contained in Article 341 of the Constitution. Paragraphs 8 to 11 of the judgment passed in the case of **Bhaiya Lal (supra)** are reproduced hereinbelow:

“8. Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Article 341 of the Constitution. Article 341(1) provides that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races, or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Sub-article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. It is thus clear, that in order to determine whether or not a

particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341. In the case of B. Basavalingappa v. D. Munichinnappa [AIR 1965 SC 1269] this Court had occasion to consider a similar question. The question which arose for decision in that case was whether Respondent 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be:

“it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of

caste A and, therefore, must be deemed to be included in caste A.”

That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted.

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

(Emphasis Supplied)

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

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

23. The Constitution Bench judgment of the Hon’ble Supreme Court, subsequently delivered in the case of **Milind (supra)**, while referring to the earlier two Constitution Bench judgments of the Hon’ble Supreme Court in the cases of **B. Basavalingappa (supra)** and **Bhaiya Lal (supra)**, though related to Article 342 of constitution equally applies in reference to Article 341, finally concluded in paragraphs 35 and 36 of the judgment, which are reproduced hereinbelow:

“35. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to

be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

36. In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar* [(1970) 2 SCC 825 : (1971) 1 SCR 804] and *Dina v. Narain Singh* [38 ELR 212 : (1968) 8 DEC 329] did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order

was intended to be. As stated in Position (1) above
no inquiry at all is permissible and no evidence
can be let in, in the matter.”

(Emphasis Supplied)

24. In the instant case, we find that the Constitution (Scheduled Castes) Order, 1950 issued on 10.08.1950 and published on 11.08.1950 in Schedule Part VIII – Uttar Pradesh at Entry No.52, mentions the caste Majhwar. It is relevant to point out that the Caste Chamar is mentioned at Entry No.24, the castes Dhusia or Jhusia are mentioned at Entry No.31. Thus, it is clear that the only caste mentioned at Entry No.52 is Majhwar and not any other caste whereas at Entry No.31, the caste Chamar is mentioned along with the other caste, Jhusia. Further by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 published on 29.10.1956, certain modifications were made resulting in the caste Majhwar finding place at Entry No.51 whereas the castes Chamar, Dhusia, Jhusia or Jatav finds mention at Entry No.24. If the castes Kewat, Mallah, Kashyap, Nishad & Bind were considered as sub-castes of Majhwar or its synonyms or generics, then certainly their names would have also mentioned at Entry No.51 along with the caste Majhwar.

25. By a further amendment through the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 published on 18.09.1976, the caste Majhwar found place in Part XVIII relating to Uttar Pradesh at Entry No.53. The caste Majhwar finds place in the Schedule to the Constitution (Scheduled Castes) Order, 1950, but the castes Nishad, Kewat, Mallah, Kashyap and Bind do not find mention therein. As such, the claim of the petitioner to include such castes as Scheduled Castes by considering them to be sub-caste synonyms or generic of the caste Majhwar is impermissible. If there had been any intention to include such castes along with the caste Majhwar in the Constitution (Scheduled Castes) Order, 1950, then such castes would also have been mentioned along with the caste Majhwar at Entry No.52 or at some other appropriate place.

26. It is noticeable that the castes Nishad, Kewat, Mallah and Bind do not find mention in the Constitution (Scheduled Castes) Order, 1950; rather, they are recognized as Other Backward Castes. In Schedule I of U.P. Act of 1994, at Serial No 13 as per notification No.792/64-1-2016 dated 26.12.2016 are recognized in the State of Uttar Pradesh as Other Backward Classes. The notification dated 10.10.2005, issued under the U.P. Act of 1994, whereby an amendment was made including the castes Kahar, Kashyap, Mallah, Nishad and Bind as Scheduled Castes, was rescinded by the State Government vide notification dated 04.07.2007, which has been annexed to the counter affidavit as Annexure No. CA-2.

27. It is unfortunate that the instant writ petition was filed in the year 2012 on the strength of the notification dated 10.10.2005 without disclosing the fact that the said notification had been rescinded vide notification dated 04.07.2007 and such conduct on the part of the petitioner cannot be appreciated.

28. Reliance placed by learned counsel for the petitioner on the case of **Dasarathi Meher (supra)** is misconceived, inasmuch as, in the case of **Dasarathi Meher (supra)**, there was no distinct caste recognized as “Kulis” and it was held to be the same caste as “Kuli.” However, in the present case, we find that the castes Nishad, Kewat, Mallah and Bind are specifically recognized as distinct castes and have been categorized as Other Backward Classes by the State Government under the U.P. Act of 1994.

29. Similarly, reliance placed upon the judgment in the case of **Dasarathi Meher (supra)** is also of no help to the petitioner, as in that case the caste Bhovi was earlier known as the Voddar caste. In fact, in the case of **B. Basavalingappa (supra)**, there was a specific Government Order directing that the community known as “Vodda” would, in future, be called “Boyi” in all Government communications and records and the issue under consideration related to a change in spelling.

30. Further, in the case of **Bhaiya Lal (supra)**, which is subsequent to the judgment in **B. Basavalingappa (supra)**, Hon’ble Supreme Court

considered the judgment passed in **B. Basavalingappa (supra)** and held that in that case, the question under consideration was whether a person belonging to the "Voddar" caste belonged to the Scheduled Caste "Bhovi" mentioned in the Order and whether holding an enquiry into the said question was permissible. The Court elaborately referred to the special and unusual circumstances which satisfied the High Court in holding that the "Voddar" caste was the same as "Bhovi" caste within the meaning of the Order and held that otherwise, the normal rule would be that it is not permissible to make any modification in the Order by producing evidence.

31. At this stage, learned counsel for the petitioner has referred to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Others v. Davinder Singh and Others** reported in **(2025) 1 SCC 1** to submit that the castes Nishad, Kewat, Mallah and Bind are sub-castes of Majhwar and such sub-classification is permissible in view of the law laid down by the Hon'ble Supreme Court in the case of **Davinder Singh (supra)**.

32. The argument advanced by learned counsel for the petitioner, relying on the judgment rendered by the Hon'ble Supreme Court in the case of **Davinder Singh (supra)** is completely misconceived, as the issue before the Constitution Bench in the aforesaid case was whether sub-classification is permissible within the Scheduled Castes. Hon'ble Supreme Court concluded that the phrase "deemed" used in Article 341(1) of the Constitution means that the castes or groups notified by the President shall be regarded as Scheduled Castes and the castes included in the list shall receive the benefits that the Constitution provides to the Scheduled Castes. It further concluded that sub-classification within the Scheduled Castes does not violate Article 341(2), because the castes are not, per se, included in or excluded from the List. Sub-classification would violate the provision only when either preference or exclusive benefit is provided to certain castes or groups within the Scheduled Castes over all the seats reserved for the class.

33. The judgment rendered by the Hon'ble Supreme Court in the case of **Davinder Singh (supra)** pertains to a different issue regarding the sub-classification of Scheduled Castes already notified under the Presidential Order under Article 341(1) of the Constitution and not with respect to recognition of castes as Scheduled Castes not notified under Constitution (Scheduled Castes) Order, 1950. Therefore, the judgment passed in the case of **Davinder Singh (supra)** is not applicable to the facts and circumstances of the present case.

34. The law on the subject matter and the issue canvassed by the petitioner in the instant writ petition stands concluded by the Constitution Bench of the Hon'ble Supreme Court in the case of **Milind (supra)**. The castes Kahar, Kashyap, Mallah, Nishad and Bind are recognized in the State of U.P. as Other Backward Classes and as such, cannot be included in the Constitution (Scheduled Castes) Order, 1950 along with the caste Majhwar by deeming them to be sub-castes, synonyms, or generics of the caste Majhwar except by a law made by Parliament.

35. Thus, in view of the above discussions, the instant writ petition being devoid of merit is **dismissed**.

36. No order as to costs.

(Amitabh Kumar Rai,J.) (Alok Mathur,J.)

22.06.2026

Mahesh