

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**REVIEW PETITION No. 12 of 2023**

**[Ref. : W.P.(C) No. 229 of 2023]**

1. Shri Mutum Churamani Meetei aged about 62 years S/o Late M. Iboton Meetei of Kabo Leikai Dewlaland, P.O. & P.S. Porompat, District – Imphal East, Manipur who is the Secretary of the Meetei (Meitei) Tribe Union being Regd. No. 15 of 2022.
2. Shri Puyam Ranachandra Singh aged about 43 years S/o Puyam Kushumani Singh of Langathel Laiom Bazar, P.O. & P.S. Thoubal, District – Thoubal, Manipur who is the Member of the Meetei (Meitei) Tribe Union being Regd. No. 15 of 2022.
3. Shri Thokchom Gopimohon Singh, aged about 73 years S/o Late Thokchom Somokanta Singh of Keishamthong Laisom Leirak, P.O. & P.S. Imphal, District – Imphal West, Manipur – 795001 who is the Member of the Meetei(Meitei) Tribe Union being Regd. No. 15 of 2022.
4. Shri Sagolsem Robindro Singh aged about 66 years S/o S. Amu Singh of Sagolband Khamnam Bazar, P.O. Imphal & P.S. Lamphel, District – Imphal West, Manipur – 795001 who is the Member of the Meetei (Meitei) Tribe Union being Regd. No. 15 of 2022.
5. Shri Elangband Baburam aged about 76 years S/o (L) E. Leipakmacha Singh of Keirak Khongnang Leikai, P.S. Kakching B.P.O. Kakching District – Kakching, Manipur who is the Member of the Meetei (Meitei) Tribe Union being Regd. No. 15 of 2022.
6. Shri Thiyam Somendro Singh aged about 46 years, S/o Th. Ibohi Singh of Ningthoukhong Ward No. 5, Ningthoukhong Kha Bishnupur, P.O. & P.S. Bishnupur, District – Bishnupur, Manipur 795126 who is the Member of Meetei (Meitei) Tribe Union being Regd. No. 15 of 2022.

.... *Petitioners*

- Versus -

1. The State of Manipur represented by the Chief Secretary, Government of Manipur and its Office at Babupara, Old Secretariat Complex, Imphal West, Manipur – 795001.

2. The Chief Secretary to the Government of Manipur and its Office at Old Secretariat Complex, Imphal, Manipur – 795 001.
3. The Secretary, Tribal Affairs and Hills Department and its Office at Old Secretariat Complex, Imphal, Manipur.
4. The Secretary, Ministry of Tribal Affairs, Government of India, Shastri Bhawan New Delhi – 110 001.

.... Respondents

**BEFORE**  
**HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioners : Mr. M. Hemchandra, Senior Advocate  
Mr. N. Jotendro, Senior Advocate  
Mr. Ajoy Pebam, Advocate  
Mr. M. Rendy, Advocate

For the respondents : Mr. M. Rarry, Special State Counsel  
Mr. Kh. Samarjit, DSGI

Date of hearing : 21.12.2023  
Date of judgment & order : 21.02.2024

**JUDGMENT & ORDER**  
**(CAV)**

[1] Heard Mr. M. Hemchandra, learned senior counsel appearing for the petitioners, Mr. M. Rarry, learned Special State counsel appearing for the State respondents and Mr. Kh. Samarjit, learned DSGI appearing for the Union of India.

[2] The present review petition has been filed under Chapter – X of the Rules of the High Court of Manipur read with Article 215 of the Constitution of India and Order XLVII R. 1 of the Civil Procedure Code, 1908 seeking review of the Para of 17 (iii) of the judgment & order dated 27.03.2023 passed by this Court in W.P.(C) No. 229 of 2023, with the following prayer :

"(a) To admit this Review Petition.  
(b) To call for record.

(c) *To review the Para No. 17 (iii) of the judgment & order dated 27.03.2023 passed by this Court in W.P.(C) No. 229 of 2023 and allow the modification of the direction made in Para No. 17 (iii) of the said judgment."*

[3] Brief facts of the petitioners' case:

The Meetei/Meitei is one of the indigenous tribes among the ethnic tribes of Manipur. The Manipur was an independent sovereignty country and Manipur was conquered by the British on 27<sup>th</sup> April, 1891. Thereafter, the region saw two kings only – Maharaja Churachand Singh (1891 – 1941 AD) and Maharaja Budhachandra Singh (1941 – 1949 AD).

India got independence on 15<sup>th</sup> August, 1947 from British colonial Rule and prior to India, Manipur got independence on 14<sup>th</sup> August, 1947 and on 21<sup>st</sup> September, 1949 Maharaja Bodhachandra, Private Secretary Sanasam Gourahari Singh and ADC Mayengbam Anand Mohan Singh formally signed the Manipur Merger Agreement. On 15<sup>th</sup> October, 1949, the Government of India officially announced that Manipur became a part of India. In the Manipur Merger agreement, 1949, the Government of India undertook certain terms and conditions for preserving various laws, customs and conventions prevailing in the State pertaining to the socio economic and religious life of the people. In the present case, earlier before the Merger Agreement, all Manipur people are the Tribe but Meetei/Meitei community was left out while preparation of list of Scheduled Tribes under the Indian Union.

The status of Meetei/Meitei Community before execution of the Merger Agreement on 21.09.1949 as a "Tribe among Tribes of Manipur" should be maintained by including the Meetei/Meitei community in the list of Schedule Tribe under the Constitution of India as the Article VIII of the Merger Agreement dated 21.09.1949 executed between the Maharaja of Manipur and Government of India. The Meetei/Meitei of Manipur has lost the identity of the Tribe while merging with the Union of India on September 21, 1949 and earlier Manipur was simple classless tribal society. However, at the

time of merging the Manipur with the Indian Union, 29 (twenty nine) communities of Manipur have been included in the Scheduled Tribe List of Indian Union and thereafter, as per the order dated 26.05.2003 of the Hon'ble Gauhati High Court, Imphal Bench passed in W.P.(C) No. 4281 of 2002, Chongthu, Khoibu and Mate have been included in the list of Schedule Tribes. Accordingly, now there are 34 (thirty four) numbers of tribal community of Manipur was included in the list of schedule tribe of the Indian Constitution, but Meetei/Meitei Tribe was left out.

As per Article 342(1) and 366 (19, 23, 25) of the Indian Constitution, the Meetei/Meitei community should be restored the Tribe Status by recognizing as a tribe/tribal community by issuing presidential order after completing procedure and modalities prescribed by the Government of India as the Meetei/Meitei are still tribe but status of Meitei community was left out while preparation of scheduled tribe lists.

Meetei/Meitei tribe union and other organization have been demanding by submitting various representations to the Union of India as well as the Government of Manipur. Considering grievances of the people of Manipur, the Government of India, Ministry of Tribal Affairs wrote a letter No. 1902005/2012-C&IM dated 29.05.2013 to the Government of Manipur in reply to the representation submitted by Scheduled Tribe Demand Committee whereby requesting for specific recommendations along with latest socio-economic survey and ethnographic report. In spite of the letter dated 29.05.2013, the Government of Manipur failed to submit the recommendation till date.

Meetei/Meitei Tribe Union has also submitted a representation to the Union of India and in reply to the representation submitted by the petitioners' union, the Ministry of Home Affairs, Government of India wrote a letter No. 12/78/2020-SS dated 20.05.2022 whereby forwarding the representation dated 18.04.2022 to the Ministry of Tribal Affairs, Government of India for further necessary action.

Accordingly, the Ministry of Tribal Affairs, Government of India also wrote a letter being No. 12026/09/2013-C&LM dated 31.05.2022 to the Government of Manipur (Home Department). But, the State Government failed to take up the necessary action for submission of the recommendation till date.

The petitioners beg to submit that as per the procedure of the Government of India for inclusion in or exclusion from the list of Scheduled Tribes, it has provided the following process:

*"Whenever representations are received in the Ministry for inclusion/exclusion of any community in/from the list of Scheduled Tribes of a State/UT, the Ministry forwards that representation to the concerned State Government/U.T. administration for recommendation as per the modalities. If the concerned State Government/UT recommends the proposal, then the same is sent to the Registrar General of India (RGI), if satisfied with the recommendation of the State Government/UT, recommends the proposal to the Central Government. Thereafter, the Government refers the proposal to the National Commission for Scheduled Tribes for their recommendations. If the National Commission for Scheduled Tribes also recommends the case, the matter is processed for the decision of the Cabinet. Thereafter, the matter is put up before the Parliament in the form of a Bill to amend the Presidential Orders."*

[4] The learned senior counsel for the petitioners submits that the present case of the petitioners is to complete the process which is pending before the State Government for the last 10 (ten) years without any explanation but inclusion of the Meetei/Meitei Community is to be decided by the competent authority after following due process of law.

Being aggrieved by the acts of the State Government, the petitioners are compelled to approach this Court by filing W.P.(C) No. 229 of 2023 which was decided vide order dated 27.03.2023 and the order reads as follows:

"17. In the result,

(i) The writ petition is disposed of.

- (ii) *The first respondent is directed to submit the recommendation in reply to the letter dated 29.05.2013 of the Ministry of Tribal Affairs, Government of India.*
- (iii) *The first respondent shall consider the case of the petitioners for inclusion of the Meetei/Meitei community in the Scheduled Tribe list, expeditiously, preferably within a period of four weeks from the date of receipt of a copy of this order in terms of the averments set out in the writ petition and in the line of the order passed in W.P.(C) No. 4281 of 2002 dated 26.05.2003 by the Gauhati High Court."*

Thereafter, All Manipur Tribal Union & 4 (four) others filed a third party appeal before the Ld. Division Bench of this Hon'ble High Court with a leave application being M.C.(W.A.) No. 88 of 2023 and the said application was allowed vide order dated 19.10.2023.

The Chairman, Hill Area Committee (HAC) of the Manipur Legislative Assembly, Manipur namely, Dinganglung Gangmei approached the Hon'ble Supreme Court of India challenging the judgment & order dated 27.03.2023 of the Hon'ble Single Judge of the High Court of Manipur by filing Special Leave Application (SLP) No. 19206 of 2023.

While pending the SLP being No. 19206 of 2023 before the Hon'ble Apex Court, the State respondents filed an application being M.C.[W.P.(C)] No. 150 of 2023 seeking extension of time limit for a further period of 1 (one) year for consideration of the Hon'ble Single Judge's direction made at Para No. 17 (iii) of the judgment and order dated 27.03.2023 passed in W.P.(C) No. 229 of 2023. Thereafter, after hearing the parties, this Court passed an order dated 09.05.2023 in M.C.[W.P.(C)] No. 150 of 2023 as follows:

*"11. In the result,*

- (i) *M.C. (WP) No. 150 of 2023 is allowed.*
- (ii) *Time for consideration of the direction made at direction No. (iii) of the order dated 27.03.2023 passed in W.P.(C) No. 229 of 2023 is extended for a*

*period of one year from the date of order in W.P.(C) No. 229 of 2023 dated 27.03.2023."*

The Hon'ble Apex Court was pleased to take up the said SLP on 17.05.2023 and after hearing the parties, passed an order dated 17.05.2023 in the SLP No. 19206 of 2023 as under:

".....

4. *Mr. Colin Gonslaves, senior counsel appearing on behalf of the petitioners submits that the direction which was issued by the Single Judge in the order dated 27 March, 2023 is contrary to the settled position of law which has been expounded by a Constitution Bench of this Court in State of Maharashtra -Vs- Milind & Ors.*

5. *Since the Writ Appeal is pending before the Division Bench, we leave it open to the parties who are aggrieved by the order of the Single Judge to make appropriate submissions before the Division Bench in that regard.*

6. *Any Party aggrieved by an order passed by the Division Bench of the Writ Appeal would be liberty to pursue its rights and remedies before this Court."*

The learned senior counsel for the petitioners, Mr. M. Hemchandra submits that even though the liberty is granted to the petitioner of the SLP No. 19206 of 2023 to approach the Ld. Division Bench of this Court, the learned counsel for the petitioners in the said SLP submitted before the Hon'ble Apex Court by relying on the Para No. 15 of a Constitution Bench which is cited as "**(2001) 1 SCC 4, State of Maharashtra -Vs- Milind & Ors.**" wherein the Constitution Bench of the Hon'ble Apex Court was pleased to hold that :

*"15. Thus, it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Caste or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes*

covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. **Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Article 341 and 342 particularly so when in Clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament.** The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended it is the Parliament that is in a better position to know having means and machinery unlike Courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or Courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Article 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Government nor the Courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Article 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included."

Further, the learned senior counsel for the petitioners submitted that during the course of hearing of the said SLP, the Hon'ble Apex Court was pleased to feel that the direction made at Para No. 17 (iii) of the judgment and order dated 27.03.2023 passed by the Hon'ble Single Judge is against the judgment of the Constitution Bench of the Hon'ble Apex Court.



The learned senior counsel for the petitioners submitted that as aggrieved by the said innocuous direction given at Para No. 17(iii), the present review petition is filed under Order XLVII Rule 1 of the CPC and the same is extracted herein below:

"1. *Application for review of petition:*

*(1) Any person considering himself aggrieved –*

*(a) by a decree or order from which an appeal is allowed.*

*(b) by a decree or order from which no appeal is allowed or*

*(c) by a decision on a reference from a Court of Small Causes.*

*and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or an account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

2. *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when; being respondent, he can present to the Appellate Court the case on which he applies for the review.*

*[Explanation – The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Superior Court in any other case, shall not be a ground for the review of such judgment.]”*

The learned senior counsel further submits that the judgment and order dated 27.03.2023 of the Single Judge is an innocuous order and the petitioners have not filed any appeal against it and moreover, the petitioners have no right to appeal as the same is passed by consent of both parties.

Further, the learned senior counsel for the petitioners further submits that the petitioners have discovered this point regarding direction made in Para No. 17(iii) barred by the judgment of Constitution Bench of the Hon'ble Apex Court as mentioned above.

Further, the learned senior counsel submits that Para No. 17 (iii) of the judgment is a simple direction for consideration as agreed by the parties but due to technically very delicate in nature, the petitioners approach this Court for modification/review by filing the present review petition.

[5] The grounds for review of the aforementioned Para No. 17(iii) are as follows:

(i) *The words i.e. "..... for inclusion of the Meetei/Meitei community in the Scheduled Tribe List ....." of the direction No. 17 (iii) of the judgment and order dated 27.03.2023 are little bit confusion with the judgment laid down by the Constitution Bench of the Hon'ble Apex Court as the Hon'ble Apex Court felt thinks that the said direction is direct direction for inclusion of a particular community. As such, it is required to be modified as **"The first respondent shall consider the case of the petitioners by sending recommendation which would be in the wisdom of realm of the State Government in reply to the Letter dated 29.05.2013 of the Ministry of Tribal Affairs, Government of India, expeditiously preferably within a period of one year from the date of order in W.P.(C) no. 229 of 2023 dated 27.03.2023 in terms of the averments set out in the writ petition and in the line of the order passed in W.P.(C) No. 4281 of 2002 dated 26.05.2003 by the Gauhati High Court."***

(ii) *As per the decision of the Hon'ble Apex Court held in **"(2001) 1 SCC 4, State of Maharashtra -vs- Milind and Others"** that the Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular case, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in Clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament. The Hon'ble Apex Court felt that the said direction made in Para No. 17(iii) of the judgment is not in consonance with the decision of this High Court.*

(iii) *The Para No. 17(iii) of the judgment dated 27.03.2023 of this Court was passed in a misconception of law as the petitioners failed to assist the Court properly at the time of hearing of the said writ petition due to his misconception of fact and law.*

(iv) *The language in the direction made in Para No. 17(iii) of the judgment dated 27.03.2023 is required to be modified in view of the judgment passed by the Hon'ble Apex Court as the same is not in consonance with the decision of the Constitution Bench of the Hon'ble Apex Court.*

[6] The learned senior counsel relying on the judgment & order passed by the Hon'ble Apex Court in **"Board of Control for Cricket in India & Anr. -Vs- Netaji Cricket Club & Ors. [(2005) 4 SCC 741]**, the relevant paras are reproduced as under :

*"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

*90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words **"sufficient reason"** in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a Court or even an advocate. An application for review may be necessitated by way of invoking the doctrine **"actus curiae neminem gravabit"**.*

[7] The relevant Para mentioned in the judgment passed in W.P.(C) No. 229 of 2023 is reproduced herein below:

*"17 (iii). The first respondent shall consider the case of the petitioners for inclusion of the Meetei/Meitei for inclusion of the Meetei/Meitei community in the Scheduled Tribe list, expeditiously, preferably within a period of four weeks from the date of receipt of a copy of this order in terms of the averments set out in the writ petition and in the line of the order passed in WP(C) No. 4281 of 2002 dated 26.05.2003 b the Gauhati High Court."*

[8] For better appreciation in deciding the matter, Article 342 of the Constitution of India is reproduced herein below:

"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 purpose 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 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 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."*

[9] After going through the above mentioned Para of Article 342, it is evident and clear that the recommendation is of institutional recommendation in nature, but not an individual recommendation.

[10] The learned senior counsel for the petitioners further pointed out points for determination of the issue as under:

- (i) The Para No. 17(iii) of the direction passed by this Court in the order dated 27.03.2023 for inclusion of a particular community in the Scheduled Tribe List is a little bit confusion with the judgment laid down by the Constitution Bench of Hon'ble Apex Court.
- (ii) As per the decision of the Hon'ble Apex Court held in **(2001) 1 SCC 4, State of Maharashtra V. Milind & Ors.** the Courts cannot or should not expand the jurisdiction to deal with the issue for inclusion of a particular case, sub-caste; a group or part of tribe or sub-tribe in any one of the entries mentioned in Presidential Orders issued under Article 341 and 342, the orders cannot be amended or varied except by law made by Parliament.
- (iii) The Para No. 17(iii) of the direction is due to misconception of fact and law.
- (iv) The language mentioned in the direction aforementioned is required to be modified since the same is not in

consonance with the decision of the Constitution Bench of the Hon'ble Apex Court.

[11] Having regard to the above mentioned factual position, it would be apposite to distillate the core aspects of the Clause (g) of the Annual Report, 2013 – 14 of the Ministry of Tribal Affairs, Government of India and the same is reproduced as under:

*"(g) Procedure for inclusion or exclusion from, the list of Scheduled Tribes.*

*In June, 1999 further revised on 25.06.2002, the Government approved modalities for deciding claims for inclusion in, or exclusion from and other modification in the orders specifying the lists of Scheduled Tribes. According to these modalities, only those claims that have been agreed to by the concerned State Government/UT Administration, the Registrar General of India (RGI) and the National Commission for Scheduled Caste & Scheduled Tribes (now National Commission for Scheduled Tribes) (NCST) will be taken up for consideration. Whenever representations are received in the Ministry for inclusion/exclusion of any community in/from the list of Scheduled Tribes of a State/UT, the Ministry forwards that representation to the concerned State Government/U.T. Administration for recommendation as per the modalities. If the concerned State Government/UT recommends the proposal, then the same is sent to the Registrar General of India (RGI). The RGI, if satisfied with the recommendation of the State Government/UT, recommends the proposal to the Central Government. Thereafter, the Government refers the proposal to the National Commission for Scheduled Tribes for their recommendation. If the National Commission for Scheduled Tribes also recommends the case, the matter is processed for the decision of the Cabinet. Thereafter, the matter is put up before the Parliament in the form of a Bill to amend the Presidential Order."*

[12] The learned senior counsel for the petitioners further has drawn the attention of this Court to the order passed by the Hon'ble Gauhati High Court passed an order dated 26.05.2003 in W.P.(C) No. 4281 of 2002 of which, the learned Single Judge relied upon and passed the above direction at Para No. 17(iii) and the same reads as thus:

*"Heard Dr. N.K. Singh, learned counsel for the petitioners and also heard Mr. K. Kumar, learned Additional C.G.S.C. appearing on behalf of the respondents 1 to 4 as well as Mr. Kh. Babul Chandra,*

*learned State Counsel appearing on behalf of the State respondents 5 and 6.*

*The limited grievance of the writ petitioners in this writ petition is that pursuant to the proposal of the Government of India to revise the list of Scheduled Tribes of the States and Union Territories after 50 years of the functioning of the Constitution in terms of Article 341 and 342 of the Constitution of India, the Govt. of Manipur vide communications dated 31.12.99 and 3.1.2001 recommended 5 (five) Tribes namely, Inpui, Liangmai, Rongmai, Thangal and Zeme for modification in the existing entry with 3 (three) other Tribes namely, Chengthu, Keibu and Mete were proposed to inclusion as new Tribes. But despite such recommendation of the Govt. of Manipur, all the 8 (eight) Tribes – 5 (five) Tribes for modification and 3 (three) Tribes for inclusion in the list of Scheduled Tribes as noticed above, have been left out of consideration by the competent authority.*

*The respondents mainly respondents 1 to 4 contested this writ petition by filing the affidavit-in-opposition. In paragraph 10 - 11 of the said affidavit-in-opposition it is stated that the proposal for modification/inclusion of the 8(eight) Tribes has not been left out of consideration and the consideration of the same is under process. It is also averred by the contesting respondents that after examination, if the 8 (eight) communities are found to be eligible, necessary amendments in the order specifying the list of Scheduled Tribes of Manipur would be carried out in terms of the provisions of Articles 342 of the Constitution.*

*Paragraphs 10 and 11 of the affidavit-in-opposition, being relevant, are reproduced as under:*

*"10. That, with regard to the statements made in para 8 of the writ petition the deponent denies the correctness of the same, the proposals of five communities namely, Inpui, Liangmai, Rongmai, Thangal and Zeme for modifications in the existing entries of the list of Scheduled Tribes and cases of three tribes namely Chongthu, Koibu, and Mate for fresh inclusion are being processed as per the approval modalities. Thus, the averments of the petitioners that the case of the above referred eight communities has been left out of consideration is not correct. Their requests are under examination.*

*11. That, as regard to the statements made in para 9 of the writ petition the deponent begs to submit that the proposals of 8 communities are under consideration of the*

*Government and they are being processed as per approved modalities. If after examination they are found eligible, necessary amendments in the order specifying the list of Scheduled Tribes of Manipur would be carried out as per provisions of Article 342 of the Constitution of India.”*

*In view of the above referred statements made by the respondents and also upon hearing the learned counsel for the parties, this Court is inclined to dispose of the writ petition with a direction that the respondents 1 to 4 shall consider the case of the petitioners expeditiously in terms of the averments made in the said paragraphs as alluded above.*

*However, liberty is granted to the petitioners to approach this Court if they are still aggrieved by any decision taken by the respondents 1 to 4 in this regard.*

*A copy of the affidavit-in-opposition as produced by the respondents 1 – 4 be kept as to form part of the record.*

*This disposes of the writ petition.”*

[13] And accordingly, the learned Single Judge passed the order dated 27.03.2023 in W.P.(C) No. 229 of 2023 with the following directions:

"17. *In the result,*

- (i) The writ petition is disposed of.*
- (ii) The first respondent is directed to submit the recommendation in reply to the letter dated 29.05.2013 of the Ministry of Tribal Affairs, Government of India.*
- (iii) The first respondent shall consider the case of the petitioners for inclusion of the Meetei/Meitei community in the Scheduled Tribe list, expeditiously, preferably within a period of four weeks from the date of receipt of a copy of this order in terms of the averments set out in the writ petition and in the line of the order passed in W.P.(C) No. 4281 of 2002 dated 26.05.2003 by the Gauhati High Court.”*

[14] The order passed by the Hon'ble Gauhati High Court as reproduced above cannot be relied upon in view of the Hon'ble Supreme Court's Constitution Bench order passed in ***State of Maharashtra -Vs- Milind & Ors. "(2001) 1 SCC 4"***.

[15] Before proceeding further, it will be convenient to know the contents of the order dated 17.05.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 19206 of 2023 and the operative portion of the same is reproduced herein below:

- "1. ...."
2. *Besides the above aspects, the State of Manipur has adverted to two developments which have taken place before the High Court:*
  - (i) *A Writ Appeal, MC(WA) No. 88 of 2023, has been filed by the Manipur Tribal Union and others against the judgment dated 27 March, 2023 of a Single Judge of the High Court of Manipur (Justice M.V. Muralidaran). The Writ Appeal has been entertained by a Division Bench of the High Court on 15 May 2023. While issuing notice, the writ appeal has been directed to be listed on 6 June, 2023; and*
  - (ii) *An application was moved by the State of Manipur before the Single Judge who passed the order dated 27 March, 2023 for extension of time on which the Single Judge has directed that time for considering direction (iii) in the order dated 27 March, 2023 shall stand extended by a period of one year.*
3. *Mr. Tushar Mehta, Solicitor General of India states that having due regard to the sensitive law and order situation which emerged in the State, the State Government, at this stage, had moved the Single Judge for extension of time by a period one year so that the situation can normalize in the meantime.*
4. *Mr. Colin Gonslaves, senior counsel appearing on behalf of the petitioners submits that the direction which was issued by the Single Judge in the order dated 27 March, 2023 is contrary to the settled position of law which has been expounded by a Constitution Bench of this Court in **State of Maharashtra Vs. Milind & Ors.***
5. *Since the Writ Appeal is pending before the Division Bench, we leave it open to the parties who are aggrieved by the order of the Single Judge to make appropriate submissions before the Division Bench in that regard.*
6. *Any party aggrieved by an order passed by the Division Bench in the Writ Appeal would be at liberty to pursue its rights and remedies before this Court.*
13. ...."

[16] The Hon'ble Supreme Court in "**State of Maharashtra V. Milind & Ors. [(2001) 1 SCC 4]**" held that :

"15. Thus, it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or



burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Caste or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. **Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the Entries mentioned in the Presidential Orders issued under Article 341 and 342 particularly so when in Clause (2) of the said Article, it is expressly stated that said orders cannot be amended or varied except by law made by Parliament.** The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with the Parliament and that too by making a law in that regard. The President had the benefit of consulting States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended it is the Parliament that is in a better position to know having means and machinery unlike Courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or Courts or other authorities or tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Article 341 and 342. This apart when no other authority other than the Parliament, that too by law alone can amend the Presidential Orders, neither the State Government nor the Courts nor tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one Entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Article 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.”

[17] The petitioners herein filed M.C.(Rev. Petn.) No. 11 of 2023, wherein praying for condonation of delay of 47 (forty seven) days in filing the present review petition and this Hon'ble Court vide order dated

15.06.2023 allowed the petition and condoned the delay of 47 (forty seven) days.

[18] The Tribal Youth Volunteers Organization and All Tribal Disabled Union filed an application to implead them as party respondents in the present review petition. However, this Court, vide order dated 03.10.2023, dismissed the said application and the same is reproduced herein below:

*"16. As stated supra, the applicants themselves admitted that the second applicant and others have filed an appeal against the order dated 27.03.2023 passed in the writ petition. Once they have invoked the appellate jurisdiction by filing an appeal, the applicants have no right to seek impleadment in the review application filed by the original writ petitioners. Since the applicants have no right to seek the relief for impleadment in Review Application No. 12 of 2023, this Court is of the view that the present petition is liable to be dismissed."*

[19] The Tribal Youth Volunteers Organisation represented by its Chairman, Mr. Chuimei and Hmar Students' Association, Joint Head Quarters Delhi represented by its Central Executive Committee, Mr. Robullien Khawbung filed M.C.(Rev. Petn.) No. 14 of 2023 praying for grant of leave to file third party review against the judgment and order dated 27.03.2023 passed in Review Petition (C) No. 229 of 2023 and M.C.(Rev. Petn.) No. 15 of 2023 for condonation of unintentional delay of 65 (sixty five) days in filing review petition. However, on the prayer made by Mr. Colin Gonslave, learned senior counsel for the applicant in M.C. (Rev. Petn.) No. 14 of 2023 and M.C.(Rev. Petn.) No. 15 of 2023 and the petitioners in un-numbered review petition requested the Court to allow to withdraw the said two miscellaneous applications on the instructions from the applicants, this Court vide order dated 16.09.2023 permitted to withdraw the said two miscellaneous applications along with the un-numbered review petition.

[20] The learned Special State Counsel for the respondent No. 1 to 3, Mr. M. Rarry and Mr. Kh. Samarjit, learned DSGI representing the respondent No. 4, the Secretary, Ministry of Tribal Affairs, Government of India submit that they are not going to file counter affidavit and further,

submit that they have nothing to say as they have not received any instructions from their concerned authority.

[21] On careful perusal of Chapter-X of the High Court of Manipur Rules, read with Article 215 of the Constitution of India and Order 47 Rule 1 of the CPC, 1908 with the observations of the Hon'ble Supreme Court made in (2005) 4 SCC 741 and on perusal of the submissions made above by the learned senior counsel, the present review petition filed by the present petitioners is maintainable.

[22] After joint perusal of the procedure laid down by the Government of India for inclusion in or exclusion from the list of Scheduled Tribe issued under Article 342 of the Constitution of India in Clause (g) of the Annual Report, 2013-14 of the Ministry of Tribal Affairs, Government of India which has been also reproduced herein above and observation made by the Constitution Bench of the Hon'ble Supreme Court in ***State of Maharashtra V. Milind & Ors. [(2001) 1 SCC 4]***, I am satisfied and of the view that the direction given at Para No. 17(iii) of the Hon'ble Single Judge dated 27.03.2023 passed in W.P.(C) No. 229 of the 2023 which is impugned herein needs to be reviewed, as the direction given at Para No. 17(iii) of the Hon'ble Single Judge is against the observation made in the Constitution Bench of the Hon'ble Supreme Court.

[23] Accordingly, the direction given at Para No. 17(iii) needs to be deleted and is ordered accordingly for deletion of the Para No. 17(iii) of the judgment and order dated 27.03.2023 passed in W.P.(C) No. 229 of 2023.

[24] With this finding and direction, this review petition is disposed of.

**JUDGE**

FR/NFR

*Bipin*