
(2000) 08 AHC CK 0125
In the Allahabad High Court
Case No : C.M.W.P. No. 30727 of 2000

Baldev Singh

APPELLANT

Vs

Tahsildar and others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 16(4), 38
Uttar Pradesh General Clauses Act, 1904 — Section 23A(1)
Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 18(1), 19A, 2(8)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 2(bb)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 13, 2
Uttar Pradesh State Commission for Backward Classes Act, 1996 — Section 3, 9

Citation : (2000) 4 AWC 2781 : (2000) 91 RD 628 : (2000) 3 UPLBEC 2262

Hon'ble Judges : Shyamal Kumar Sen, C.J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.P. Singh, Murlidhar and K.P. Upadhyaya, for the Appellant; R.P. Goel, A.G., for the Respondent

Final Decision : Allowed

Judgement

G.P. Mathur, J.—The petitioner a "Jat Sikh" was elected as a member of Zila Panchayat, Rampur. In the election held for various panchayats in the State in June, 2000, in accordance with Section 18(1) (b) of U. P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as the Zila Panchayat Adhiniyam). The office of Adhyaksha of Zila Panchayat. Rampur, has been reserved for a person belonging to backward class in accordance with Section 19A of the Adhiniyam. The petitioner wanted to contest the election for the office of Adhyaksha and for that purpose, he moved an application on July 10. 2000 before the Tehsildar of his area for being issued a certificate that he belongs to a backward class. The Tehsildar directed an enquiry and after receiving a report passed an order on July 11. 2000. holding that the petitioner did not belong to backward class. The present writ petition has been filed praying

that the order of the Tehsildar be quashed and a writ of mandamus be issued to the respondents commanding them to issue a certificate to the effect that the petitioner belongs to backward class.

2. Section 2 (8) of Zila Panchayat Adhiniyam provides that "backward classes" in the Act shall have the meaning assigned to it in U. P. Panchayat Raj Act, 1947. Section 2 (bb) of U. P. Panchayat Raj Act defines "backward classes" and it means the backward class of citizens specified in Schedule-1 of the U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act. 1994 (hereinafter referred to as the Act). Section 2 (b) of this Act lays down that for the purposes of the Act. "Other Backward Classes of citizens" mean the backward classes of citizens specified in Schedule-I. At the time when the Act was originally enacted. Schedule 1 contained names of 55 castes, which were recognised as backward classes. Subsequently, by notifications Issued from time to time, some more castes were added and finally by a notification issued on May 10. 2000. "Jat" has been included as item No. 78.

3. The claim of the petitioner for being issued a certificate of backward class is founded on the aforesaid entry 78 whereby "Jat" has been included as a backward class. The case of the petitioner is that as he is a "Jat Sikh", he comes within the aforesaid entry of Jat and he is entitled for being Issued a certificate that he belongs to backward class. Sri Murlidhar, learned senior counsel for the petitioner, has contended that the preamble of the Constitution lays emphasis on securing to all citizens justice, social, economic and political and also equality of status and of opportunity and this is sought to be achieved by Article 38, which finds place in Part IV relating to Directive Principles of State Policy, and with that end in view Section 19A has been inserted in the Zila Panchayats Adhintyam, which provides that the office of the Adhyaksha of the Zila Panchayats shall be reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes. The Schedule of the 1994 Act enumerates the castes, irrespective of religion of the person of that caste and, as "Jat" has been notified as a backward class, the petitioner who is a "Jat Sikh" is entitled to be issued a certificate of backward class in order to enable him to contest the election of Adhyaksha of Zila Panchayat of his district which has been reserved for a person belonging to the said class. The learned Advocate General has, however, submitted that the castes designated as backward classes and included in Schedule 1 of 1994 Act have been identified on the basis of religion and entry 78 which mentions "Jat" means a Hindu Jat and not a Sikh Jat.

4. What would constitute "backward classes of citizens" has been examined in great detail in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , and in the leading judgment delivered by B. P. Jeewan Reddy, J., with whom 4 other Judges agreed, it was observed as follows in para 83 of the reports :

".....Coming back to the question of identification, the fact remains that one has to begin somewhere--with some group, class or section. There is no set or recognised method. There is no law or other statutory instrument prescribing the

methodology. The ultimate idea is to survey the entire populace. if so. one can well begin with castes, which represent explicit identifiable social classes/ groupings, more particularly when Article 16(4) seeks to ameliorate social backwardness..... The concept of "caste" in this behalf is not confined to castes among Hindus. It extends to castes, wherever they obtain as a fact, irrespective of religious sanction for such practice. Having exhausted the castes or simultaneously with it, the authority may take up for consideration other occupational groups, communities and classes. For example, it may take up the Muslim community (after excluding those sections, castes and groups, if any, who have already been considered) and find out whether it can be characterised as a backward class in that State or region, as the case may be. The approach may differ from State to State since the conditions in each State may differ. Nay, even within a State, conditions may differ from region to region. Similarly, Christians may also be considered. If in a given place, like Kerala, there are several denominations, sections or divisions, each of these groups may separately be considered. In this manner all the classes among the populace will be covered and that is the central idea....."

Again, in para 207, it was stated as follows :

"It is said that the caste system is unknown to other communities such as Muslims, Christians, Sikhs, Jews, Parsis. Jains, etc. In whose respective religion, the caste system is not recognised and permitted. But in practice, it cannot be irrefutably asserted that Islam, Christianity, Sikhism are all completely immune from casteism."

Then in para 210, it was observed as follows :

Though Christianity does not acknowledge caste system, the evils of caste system in some States are as prevalent as in Hindu society especially among the converts....."

With regard to Sikhs, it was observed as follows :

"It is further not correct to say that the caste system is prevalent only among the Hindus, and other religions are free from it.....As regards Sikhs, there is no doubt that the Sikh religion does not recognise caste system. It was in fact a revolt against it. However, the existence of Mazhabis, Kabir-panthis. Ramdasias. Baurias, Sarais and Sikligars and the demand of the leaders of the Sikhs themselves to treat as Scheduled Castes could not be ignored and from the beginning they have been notified as a Scheduled Caste....."

5. The conclusion of R. M. Sahai, J., who gave a dissenting opinion on certain issues, have been mentioned in para 700 and sub-para (3) thereof reads as follows :

"(3) Reservation under Article 16(4) being for any class of citizens and citizen having been defined in Chapter II of the Constitution includes not only Hindus but Muslims. Christians, Sikhs, Budhs, Jains, etc. the principle of Identification

has to be of universal application so as to extend to every community and not only to those who are either converts from Hinduism or some of whom to (who) carry same occupation as some of the Hindus."

6. In view of the above noted authoritative pronouncement by a Bench of nine Judges, there cannot be even a slightest doubt that the identification of backward class has to be done on the basis of caste and the system of caste is not confined to Hindus alone but is prevalent amongst other castes including Sikhs.

7. "Jat" caste has been recognised as a backward class in view of its entry in Schedule 1 of the 1994 Act. The entry as it is, does not make reference to any particular religion. Therefore, there is no reason at all to treat a "Jat" who is not a Hindu, as not covered by the said entry. In our opinion, a "Jat Sikh" being a "Jat" would come within the ambit and sweep of the entry "Jat" and, therefore, belongs to a backward class.

8. In *Indra Sawhney* (supra) has laid down in no uncertain terms that as a fact, there are castes amongst the followers of other religions like Muslims. Christians and Sikhs in India though the aforesaid religions by themselves neither recognise nor permit a caste system. Islam and Christianity did not have their origin in India but came from outside. But Sikh as a religion or faith was born in India and it was the Hindus of India who adopted it as their religion. The names of Sikhs are akin to that of Hindus of that region and the Sikhs are also governed by Hindu Marriage Act, Hindu Succession Act, etc. Therefore, for a Sikh to belong to "Jat" caste is all the more natural and probable in comparison to a Muslim or Christian. There is nothing inherently wrong or contradictory for a person belonging to Sikh faith to be member of "Jat" caste. Being a Jat he will be a person belonging to a backward class in view of 1994 Act,

9. Sri Murlidhar, learned senior counsel for the petitioner and also the learned Advocate General have referred to certain castes enumerated in Schedule I to get support for their respective submissions. Sri Murlidhar has submitted that certain castes like Chikwa (entry 18), Kunjra (entry 12), Banjara [entry 31) and Darzi (entry 25) are found amongst Hindus and Muslims both, which shows that the identification of backward classes has been done only on the basis of caste and it has no correlation with religion. Learned Advocate General has referred to "Muslims Kayasth" (entry 45), and Rai Sikh (entry 56) and has submitted on their basis that only one caste amongst Sikh, namely, "Rai Sikh" has been identified as backward class. In our opinion, entry 45 and 56 shows that wherever a particular caste was in existence in more than one religious group and the Legislature wanted to include persons of that caste of only one religion, the same has been specified by also mentioning the name of the religion. "Kayasth" is a caste in Hindus but the Legislature did not want to treat them as backward class and, therefore, the entry was specifically confined to Muslims by mentioning as "Muslim Kayasth" which clearly excludes Hindu Kayasth. Some people belonging to Bhumihar caste in U. P. and Bihar write their surname as

"Rai". Here the Legislature deliberately mentioned the word "Rai Sikh" so as to confine persons belonging to the said caste of Sikh faith alone as backward class. Therefore, the aforesaid entries do not at all support the case of the State and on the contrary strengthen the petitioner's case that the entry would also include persons belonging to the said caste even though they may be professing Sikh faith.

10. Learned Advocate General has next contended that the Legislature has enacted U. P. State Commission for- Backward Classes Act, 1996 and Section 9 thereof imposes an obligation on the State Commission for Backward Classes constituted u/s 3 of the said Act to examine requests for inclusion of any class of citizens as a backward class in the Schedule and hear complaints of non-inclusion of any such class. The Commission has power to investigate and monitor all matters relating to the safeguards provided for the backward class. It is contended on the basis of averments made in the counter-affidavit [which has been filed by a Deputy Secretary of Backward Welfare Department, Government of U. P.), that at the time of inclusion of Mat caste in the Schedule, the Government had only examined the social and educational status of Hindu Jats and no such survey was made with regard to Jat Sikhs. It has been further urged that "Jat Sikhs" never raised any grievance nor made any demand for their inclusion in the list. Reference has also been drawn to a letter sent by Deputy Secretary of U. P. Government on June 2, 2000, to the Commissioner of Moradabad Division, wherein, clarification was made that "Jat Sikh" has not been included as a backward class. In our opinion, the contention raised is wholly misconceived, as the fact that Jat Sikhs did not make any demand for being included in backward class is wholly irrelevant for deciding the controversy. The non-making of demand by them would not mean that they should be deprived of what is lawfully due to them, especially the opportunity to contest for an elected office, which in law, is available to them. The entry in the Schedule has to be given its plain meaning and has to be understood in a common sense way. The fact that the State Government did not conduct a survey with regard to the Sikhs or that the Sikhs did not make any demand for their inclusion in the Schedule cannot alter the meaning of the entry. If the State Government did not perform its statutory duty or did not make the necessary inquiry before issuing the notification for including the Jats as a backward class, it cannot change or alter the meaning of the entries made in the Schedule. The power to amend the Schedule has been conferred by Section 13 of 1994 Act, which provides that the State Government may, by notification, amend the Schedule and upon the publication of such notification in the Gazette, the Schedule shall be deemed to be amended accordingly. The notification Issued for amending the Schedule has been given considerable importance and the Legislature has given ample safeguards for that purpose. Section 14 provides that any notification issued u/s 13 shall be laid, as soon as it may be, before both the Houses of State Legislature and the provisions of subsection (1) of Section 23A of U. P. General Clauses Act, 1904, shall apply as they apply in respect of rules made by the

State Government under any U. P. Act. Therefore, the notification Issued including "Jat" as a backward class has also received concurrence from both the Houses of State Legislature. The letter sent by the Deputy Secretary of Government of U. P. on June 2, 2000, is wholly Irrelevant as he has no authority in law to tell as to how an entry made in the Schedule should be Interpreted. It may be pointed out that it is settled law that even the speeches made by the members of the Constituent Assembly in the course of the debates on the draft constitution cannot be treated as extrinsic aid to the construction of the Constitution (see *State of Trav. Co. v. Bombay Co. Ltd.* AIR 1952 SC 366 Similarly, the debates in Parliament for a Bill are not admissible for construction of the Act. which is ultimately enacted (see *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and *A.K. Gopalan Vs. The State of Madras*, . The Court has to be solely guided by the language used in the enactment and has to give plain meaning to the words used therein. Therefore, the contention based upon the fact that proper survey was not done or no demand had been raised by the "Jat Sikhs" for their inclusion in backward class is wholly misconceived and cannot be accepted.

11. Learned Advocate General has referred to *S. Swvigaradoss Vs. Zonal Manager, F.C.I.*, . and has urged on its basis that the Court has no power to alter the notification or Schedule. In our opinion, the authority cited has no application to the facts of the case. By holding that a "Jat Sikh" is also included in the entry "Jat", we are not altering or modifying the said entry but are merely holding that it would include a person belonging to the said caste though professing Sikh faith.

12. In view of the discussion made above, we are clearly of the opinion that a "Jat Sikh" being also a "Jat" is fully covered by entry 78 of Schedule I of 1994 Act and is a member of backward class. The petitioner is, therefore, entitled to be issued a certificate that he belongs to a backward class and is eligible to contest for the office of Adhyaksha, Zila Panchayat. Rampur. which has been reserved for a person belonging to the said community. A.W.C. 175

13. The writ petition succeeds and is hereby allowed with costs. The impugned order dated July 11, 2000, passed by respondent No. 1 is quashed and the respondents are commanded by a writ of mandamus to Issue a certificate to the petitioner that he belongs to backward class. By an interim order passed on July 31, 2000. It was directed that the nomination paper filed by the petitioner shall be accepted. The result of the election held for electing the Adhyaksha, Zila Panchayat, Rampur, shall be declared in accordance with law treating the petitioner to be a member of backward class.