

(1982) 11 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 132 of 1975

Buta Ram Azad and Others	Vs	APPELLANT
Union of India and Another		RESPONDENT

Date of Decision : 05-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 342, 343

Citation : AIR 1983 P&H 230

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Judgement

1. The petitioners' case is that they belong to Vimukat Jatis which were earlier known as criminal tribes during the British regime and an Act was also passed by the them British regime, known as Criminal Tribes Act, 1911, This Act was subsequently amended in 1924 and certain tribes were declared as criminal tribes including the tribe of the petitioners. It is claimed by the petitioners that their ancestor were in fact Rajputs and they migrated from Mewar to different parts of the country in the 16th century and acquired nomadic character. These tribes did not co-operate with he British regime and because of the nomadic character became educationally and economically backward.

2. The Constitution (Scheduled Castes) Order, 1950 was promulgated by the Union Government under Art. 342 of the Constitution of India. Likewise the Constitution (Scheduled Tribes) Order, 1950 was issued under Art 343 of the Constitution of India. In the year 1952 the Criminal Tribes Act, 1924 was repealed and the criminal tribes were denotified and they came to be known as Vimukat Jatis. The Vimukat Jatis were treated as Scheduled Castes and were accordingly included in the Constitution (Scheduled Castes) Order, 1950.

3. The sole grievance of the petitioners is that they do not have the characteristics of Scheduled Castes and could not be including in the Constitution (Scheduled Castes) Order. 1950 and they are part and parcel of the Scheduled Tribes and should have been included in the Constitution (Scheduled Tribes)

Order. 1950, Hence they have challenged the Constitution (Scheduled Caste) Order. 1950 as ultra vires by way of this petition under Arts. 226 and 227 of the Constitution of India.

4. Reply has been filed on behalf of the Union of India and also by the State of Punjab. In Para 11 of the reply filed by the Union of India it is stated that the following criteria was adopted for declaring a community either as a Scheduled Caste or a Scheduled Tribe :--

(a) Scheduled Castes : Extreme social, educational and economic backwardness arising out of traditional practice of untouchability.

(b) Scheduled Tribes :--Indications of primitive traits, distinctive culture, geographical isolation, shyness of contacts with the community at large and backwardness.

It is further stated in the reply that none of the communities of the petitioners satisfied the criteria for inclusion in the list of Scheduled Tribes. From the reading of the criteria adopted for declaring a community as a Scheduled Tribe or a Scheduled Caste it is plain that if a community is under extreme social, educational and economic backwardness, arising out of traditional practice of untouchability, then it should be declared a Scheduled Caste and if a community has indications of primitive traits, distinctive culture, geographical isolation, shyness of contacts with the community at large and backwardness, then it will be included in the list of Scheduled Tribes. The argument of the learned counsel for the respondents that the petitioners tribes do not fulfil the criteria for inclusion in the list of Scheduled Tribes is misconceived. The petitioners Vimukat Jatis are not the untouchables. They claim to be the descendants from the Rajput family of Raja Sans Mal, brother of Maharana Pratap of Mewar and they became educationally and economically backward and weak. They acquired nomadic character because they did not settle at one place since 16th century. This assertion of the petitioners is not denied by the respondents. Since they are not socially, educationally and economically backward, arising out of traditional practice of untouchability, they could not be included in the list of the Scheduled Castes. They could only be included in the list of Scheduled Tribes. The Constitution (Scheduled Castes) Order, 1950 cannot be declared as ultra vires of the Constitution merely on the ground that the Vimukat Jatis were included in the order. At best the Vimukat Jatis of this petitioners can be deleted from the category of Scheduled Castes, but I do not find any unconstitutionality in the Constitution (Scheduled Castes) Order, 1950. It does not infringe any provision of the Constitution, It can only be said that the petitioners' Vimukat Jatis were included wrongly in this order.

5. No other point was urged.

6. For the reasons recorded, I hold that the Constitution (Scheduled Castes) Order. 1950 is not ultra vires of the Constitution and it does not infringe any provision of the Constitution but I am of the view that the Vimukat Jatis to which

the petitioners belong have been wrongly included in the list of the Scheduled Castes. In fact they should have been included in the list of the Scheduled Tribes and the Government of India may consider their deletion from the list of the Scheduled Castes and they may be included in the list of the Scheduled Tribes. With these observations this petition is disposed of with costs to be paid by the Government of with costs to be paid by the Government of India. Counsel's fee RS. 500/-

7. Ordered accordingly.