
(2018) 10 UK CK 0038
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 202 of 2014

Chandra Ballabh Bhatt	Vs	APPELLANT
State of Uttarakhand & others		RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Uttar Pradesh Reorganization Act, 2000 — Section 25
Constitution of India, 1950 — Article 15(4), 16(4), 342, 342(1), 342(2), 366(25)

Citation : (2018) 10 UK CK 0038

Hon'ble Judges : Rajiv Sharma, ACJ; Manoj K. Tiwari, J

Bench : Division Bench

Advocate : Lokendra Dobhal, M.C. Pandey, Prabha Naithani

Final Decision : Disposed Of

Judgement

Manoj K. Tiwari. J.

1. This PIL has been filed seeking the following relief:-

â??(i) Issue, Writ, Order or direction in the nature of mandamus directing the respondents not to declare the Khampa caste as Schedule Tribe Caste

and also not issue Schedule Tribe Caste Certificate to the Khampa caste.â??

2. The grievance raised in this PIL is that persons belonging to Khampa community are being treated as member of Scheduled Tribes, while they do

not belong to Scheduled Tribe. It is stated that they are issued Scheduled Tribes Certificate, on the strength of which they are given various benefits

meant for persons belonging to Scheduled Tribes community.

3. Reliance has been placed upon the Constitution (Scheduled Tribes) (Uttar Pradesh) order, 1967, whereby inter alia (a) Bhotia, (b) Buksa, (c)

Jannsari, (d) Raji and (e) Tharu communities were deemed to be Scheduled

Tribes in relation to the State of Uttar Pradesh.

4. It is the contention of the petitioner that Khampa community has not been included in the Presidential Order issued under Article 342(1) of the

Constitution of India in respect of State of Uttar Pradesh and only Bhotia community has been so included. Reliance is also placed upon Section 25

read with Sixth Schedule to the U.P. Reorganization Act, 2000.

5. The law on the subject is clear. An entry in the presidential order notified under Article 342 of the Constitution has to be read and construed as it

stands. The power to include or exclude from the list of Scheduled Tribes is vested in Parliament under Clause 2 of Article 342 of the Constitution.

Hence, it is not open to any Court or administrative authority to direct that a community which is not listed in the form of an entry in the presidential

order, is synonymous with or included in a tribe which is duly notified. The power to include or add to an entry in the list is conferred exclusively upon

Parliament. "Scheduled Tribes" is defined in Article 366 (25) of the Constitution as under:-

"Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under

Article 342 to be Scheduled Tribes for the purposes of this Constitution;

6. Petitioner has referred to a Government Order dated 31. 03.1986, whereby all District Magistrates were directed to ensure that no caste certificate

is issued in favour of a person, who does not belong to the caste/tribe mentioned in the presidential orders.

7. Reply given by Tehsildar, Pithoragarh on 23.01.2006 under Right to Information Act has been brought on record by the petitioner, according to

which, Bhotia community alone is included in the presidential order regarding Scheduled Tribes of State of Uttar Pradesh and Khampa community is

not so included.

8. A counter affidavit has been filed by Tehsildar, Pithoragrah on behalf of respondent Nos.2 and 3, in which it is stated that persons belonging to

Khampa community are being granted Scheduled Tribes Certificate meant for Bhotia community on the basis of local inquiry. Paragraph No.5 of the

said counter affidavit is extracted below:-

"5. That the contents of para 1 & 2 of the writ petition require no comments, however, it is reiterated that the Bhotia Schedule Tribe certificate is

being granted to those persons, who are found to come under such category by way of local inquiry on the basis of local appearance, dressing, food

habits, looks and complexion, rituals, marriages, etc. including the Khampas.â??

9. The Secretary, Social Welfare Department has also filed a counter affidavit. Paragraph No.3 of the said counter affidavit is extracted below:-

â??3. That the instant writ petition has been filed, inter-alia, with a prayer for a directions to the respondents for not declaring the Khampa Caste as

Scheduled Tribes caste and for not issuing Scheduled Tribes Certificate to the Khampas. It is submitted that the Scheduled Tribe certificates are being

issued to the persons belonging to the Bhotias as per the clarification issued vide government order dated 05.02.2000, which specifically states that

only those persons be granted the Bhotia Scheduled Tribe Certificates who actually belong to such tribe and the same can be verified only upon an

enquiry at the local level. It is submitted that the person of Khampa community are being granted the certificates of Scheduled Tribe as, upon detailed

local enquiry, it has been found that they belong to the Bhotia community. It is submitted that, as per the aforesaid government order, it has to be

determined locally that a particular person belongs to Bhotia community on the basis of local appearance, dressing, food habits, looks and complexion,

rituals, marriages, etc. and only then a certificate is to be issued. It is pertinent to state here that no certificates for the Scheduled Tribes are being

issued in the name of Khampa Caste.â??

10. The stand taken by the respondents indicates that no objective standards have been laid down for grant of Scheduled Tribes Certificate meant for

Bhotia community and much is left to the subjective satisfaction of the Local Revenue Authorities i.e. Patwari and Tehsildars. According to the

respondents, the criteria for determining whether a person belongs to Bhotia community is appearance, dressing, food habits, looks and complexion,

rituals, marriage, etc.

11. Similarity in appearance, dressing, food habits, looks and complexion, rituals and marriages, etc. with persons belonging to Bhotia community

cannot be a valid criteria for determining tribal status of a person. It is common knowledge that persons residing in a particular area in the hills have

similarity in appearance, dressing, food habits, looks and complexion, rituals and marriages, etc. Determination of tribal status of a person cannot be

left to the ipse dixit of the revenue authorities. In view of definition of Scheduled Tribes given under Article 366(25), it is incumbent upon the

competent authority to ascertain whether a tribe or tribal community is part of or group within such tribe or tribal communities, as are deemed under

Article 342 to be Scheduled Tribes. Counter affidavits by the respondents are absolutely silent on this aspect of the matter.

12. On the strength of a Scheduled Tribe Certificate, a person becomes entitled to various benefits including reservation in public employment as well

as education institutions. Such reservation is referable to Article 15(4) and 16(4) of the Constitution. Therefore, a person, who does not belong to a

Scheduled Tribe, cannot be permitted to reap the benefits meant for Scheduled Tribes communities, as it has the effect of depriving the genuine

Scheduled Tribe persons of the benefits conferred on them by the Constitution.

13. The criteria adopted by the respondents for identification cannot be said to be infallible. The State Government is under an obligation to devise a

foolproof method for identifying as to whether a person claiming Scheduled Tribe Certificate belongs to Bhotia community or not.

14. Having regard to the seriousness of the matter, we direct the State Government to devise a mechanism in consultation with all stakeholders to

ensure that no person, who does not belong to a Scheduled Tribe community, is issued a Scheduled Tribe Certificate. The necessary exercise shall be

completed within a period of four months from the date of production of certified copy of this order, whereupon respondent No.1 shall issue necessary

instructions to all District Magistrates within further period of three weeks.

15. With above observations and directions, the present PIL stands disposed of.