

(2017) 04 PAT CK 0001

In the Patna High Court

Case No : 10650 of 2015

Deepak Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Constitution of India, Article 342, Article 341 (2) - Scheduled Tribes - Scheduled Castes
Bihar State Commission for Backward Classes Act, 1993, Section

Citation : (2017) 04 PAT CK 0001

Hon'ble Judges : Sudhir Singh

Bench : SINGLE BENCH

Advocate : Sharda Nand Mishra, Harish Chandra Patel, Dinu Kumar, Ritika Rani, Deepak Kumar, Umesh Mishra, Lalit Kishore, Manish Dhari Singh, Y.V. Giri, Raj Kumar, S.D. Sanjay, Chittranjan Sinha, Himanshu Kumar Akela, Pradip Kumar, S. Choubey, Pushkar Narain Shahi, M

Judgement

1. All these writ petitions have been filed for quashing a circular bearing No. 9532 dated 01.07.2015 issued by the Additional Secretary, General Administrative Department, Government of Bihar, (Annexure-1) in the record of C.W.J.C. No. 10650 of 2015 whereby "Tanti/Tantwa" is deleted from the Most Backward list and it is alleged that it has been included in a list of Scheduled Caste. It is stated that "Tanti" and "Tantwa" belong to the Most Backward Class community in the State of Bihar but by deleting their name from the said list and by including them in the list of Scheduled Caste the State of Bihar has acted in violation to the mandate of the Constitution inasmuch as inclusion of a Scheduled Caste or a Scheduled Tribe in the list of Schedule Caste and Scheduled Tribe by amendment to the Presidential order is permissible only by the Central Government or by the President and not by the State Government. Accordingly, by contending that the State Government has acted in excess of the power available to it, it does not have the power to include a caste in the category of Scheduled Caste, the writ petition has been filed and in support of the aforesaid

contention the following judgments have been referred to:- Shree Surat Valsad Jilla K.M.G. Parishad Vs. Union of India and others- (2007) 5 SCC 360, State of Maharashtra Vs. Milind and others- A.I.R. 2001 SC 393, Paduthota Ramachandra and others etc. Vs. Union of India and another etc.- A.I.R. 1996 Karnataka 282, Manita Kanaujia Vs. The State of Bihar and others- 1993 (2) PLJR 491, Subhash Chandra and another Vs. Delhi Subordinate Services Selection Board and others- (2009) 15 SCC 458, State of Maharashtra and others Vs. Kumari Tanuja A.I.R. 1999 SC 791, E.V. Chinnaiah Vs. State of A.P. and others- (2005) 1 SCC 394, Ashok Kumar Thakur Vs. Union of India and others- (2008) 6 SCC 1 and Payment of Wages Inspector, Ujjain Vs. Surajmal Mehta, Director, The Barnagar Electric Supply and Industrial Co. Ltd. and another- A.I.R. 1969 SC 590.

2. By referring to the judgment rendered by the Supreme Court in the case of Kumari Tanuja (supra) and other judgments, it was argued that the power to include a particular caste or exclude a caste from the list of Scheduled Caste or Scheduled Tribe is conferred only with the Central Government and the State Government does not have any power to do so. It was submitted that by including "Tanti" and "Tantwa" in the Scheduled Caste category the State Government has acted in excess of the powers available to them. Referring to the law laid down by the Supreme Court in the case of Indra Sawhney Vs. Union of India- 1992 Supp (3) SCC 217 and various other cases as indicated hereinabove the only submission that was canvassed before us is that the impugned order/circular (Annexure-1) has the effect of removing the caste in question from the list of Most Backward Class and including it in a Scheduled Caste Category which is beyond the powers available to the State Government and as it could be done only by issuing a notification under Clause (1) of Article 342 of the Constitution by the Central Government after amendment in the Presidential Scheduled Caste Order of 1950.

3. On the contrary, learned counsels appearing for Respondent No. 7 took us through the circular in question (Annexure-1) and argued that in the notification issued by the Central Government i.e. the Presidential list notified by the Central Government for the State of Bihar the caste Pan and Swasi is already notified and included in the category of Scheduled Caste by the Government of India and when a reference was made with regard to the question of Tanti and Tantwa, the State Backward Class Community gave its recommendation and pointed out that the caste Tanti and Tantwa is only a "title", is synonymous with the caste Pan and Swasi already included at Serial No. 20 of the Scheduled Caste list notified by the Central Government and, therefore, their name should be removed from the list of highly Backward Class as they are already covered by the entry made namely, the entry, Pan and Swasi which is a notified Scheduled Caste. Accordingly, it is the case of the respondents that the State Government has not included the caste in the list of Scheduled Caste, on the contrary on the basis of recommendation of the Commission as Tanti and Tantwa which is in fact a title, synonymous of Pan and Swasi, a duly notified Scheduled Caste, the State has only deleted it from the list of Most Backward Class. It is said that the

Commission has made its recommendation and as the recommendation of the Commission is binding on the State Government, the State has not committed any error. By taking us through the Circular (Annexure-1) it was argued that the petitioners are misconstruing the same, the State has only taken action for clarifying its position by indicating the correct fact, therefore, no error has been committed warranting consideration.

4. We have heard learned counsel for the parties at length and we have considered the rival contentions.

5. Before adverting to consider the aforesaid aspect of the matter, it may be taken note of that the Bihar State Commission for Backward Class has been created under the provisions of the Bihar State Commission for Backward Classes Act, 1993 (hereinafter referred to as "the Act") and after going through the provisions of the Act it is clear that the function of the Commission is to examine request for inclusion of any class of citizen as a Backward Class, hear complaints of over inclusion or under inclusion in Backward Class and tender its advice to the State Government and sub-section (2) of Section 9 wherein the function of the Commission as indicated hereinabove is contemplated provides that the advice of the Commission shall ordinarily be binding upon the State Government. Section 11 of the Act of 1993 mandates periodical revision of list of Backward Classes by the State Government. It is in pursuance to these provisions of the Act of 1993 that the question of complaints made with regard to including Tanti and Tantwa in the list of higher Backward Class was referred to the Commission and the Commission submitted its report after conducting elaborate enquiry into the matter. The Commission after due deliberation in its report submitted, as is evident from the counter affidavit filed by the Respondent Nos. 1 to 3 that Pan and Tanti (Tantwa) is the same caste and not a different caste. The social conditions and cultural background of these two communities are the same. It was also recommended and confirmed by the Committee that Tanti (Tantwa) is merely a title and the Commission opined that on the basis of a title one cannot be deprived of the Constitutional rights available to him. In its communication No. 31A dated 02.02.2015 the Committee made a recommendation to the effect that in view of this, entry made at Serial No. 33 of the State List depicting Tanti (Tantwa) as an Extremely Backward Class be deleted as they are already a Scheduled Caste notified in the Presidential order and with a view to enable them to reap the benefit of this status the recommendation was made. The Committee's report has also studied various factors in this regard and it has come to the conclusion that Pan/Swasi and Tanti are synonymous word and they come in the weaver community. It was after taking note of these recommendations of the Committee that the State Government took a decision to delete the name of Tanti (Tantwa) from the list of Extremely Backward Class so that they can get the benefit of Caste Certificate in the category of Pan/Swasi. It is in the backdrop of the aforesaid that the impugned notification was issued by the State Government.

6. There is no dispute in accepting the proposition put forth by learned counsel for the petitioners that the State Government does not have the power to include a Scheduled Caste or a Scheduled Tribe community in the order specifying the aforesaid categories in the Presidential order. It can only be done by the Government of India in view of the mandate of Article 341 (2) of the Constitution read along with the Constitution Scheduled Caste Orders as amended from time to time. To that effect, we see no difficulty in accepting the proposition of the petitioners. However, on a perusal of the Circular (Annexure-1) it is seen that the State Government has only directed for removal of Tanti and Tantwa community from the list of Most Backward Classes as notified for the State of Bihar in view of the fact that it is synonymous to Pan and Swasi, only a title, is a notified Scheduled Caste, already notified by the Central Government way back in the year 1978 and 1997. It is seen that finding Pan and Swasi to be already notified as Scheduled Caste in the State of Bihar as per the Constitution Scheduled Caste Order 1950 and Tanti and Tantwa to be erroneously notified as belonging to other Backward Classes in the State of Bihar, it being a title only synonymous to the categories Pan and Swasi already notified by the Central Government, keeping in view the recommendation of the Commission the Circular in question has been issued. It is a case where the State Government has not amended the list of Scheduled Caste as notified by the Union but it has only deleted a particular entry namely Tanti and Tantwa from the list of other Backward Class and it is found that as they are synonymous with Pan and Swasi which is a notified Scheduled Caste, therefore, their name should be deleted from the State list of highly Backward Class so that they get the benefit of the Scheduled Caste category notified by the Union Government. That in sum and substance is the import of the circular in question and that being the position, we see no reason to make any indulgence into the matter.

7. That apart certain challenge was tried to be made to the recommendation made by the Commission for deleting all these castes from the list of highly Backward Class. A Coordinate Bench of this Court while deciding C.W.J.C. No. 9215 of 2015 (Kishori Das and others Vs. The State of Bihar and others) on 04.02.2017 has held that the report of the State Backward Classes Commission being based on deliberations held after due research and inquiry and if it is accepted by the State Government a Writ Court cannot sit over the said recommendation of the Committee and deal with the report as if it is exercising appellate jurisdiction over the decision arrived at by an expert Commission after due consideration. It has been held by the Division Bench that this Court has limited jurisdiction to interfere with the findings of such Statutory Committee and rejected a plea made for holding the recommendation of the Committee to be illegal.

8. Accordingly, we hold that the Committee's recommendation made has been accepted by the State Government and the circular/resolution in question was passed by the State Government based on the aforesaid recommendation of the Committee. Once a Committee of experts dealing with the subject had given its

recommendation and the recommendation was to delete the particular entry from the Most Backward Caste so that the persons belonging to that category would get the benefit of a Scheduled Caste Category already notified by the Central Government, we see no error in the aforesaid warranting reconsideration.

9. We find that once the Commission has made its recommendation which is binding on the State Government in view of Sections 9 and 11 of the Act and taken action in the matter, we cannot sit in appeal over the decision of the Commission and make any further indulgence into the matter. The petitions filed by the petitioners are misconceived and we see no reason to interfere into the matter. It is not a case as canvassed by the petitioners wherein the State Government has amended the Presidential order without any authority of law and has included a particular caste in the category of Scheduled Caste or Scheduled Tribe, but the State Government has only deleted certain highly Backward Caste from the State list on account of the fact that it is a Scheduled Caste already notified in the Presidential order and, therefore, to enable them to take the benefit of the Presidential order the circular has been issued as a clarification. That being the actual position, we see no reason to make any indulgence into the matter.

10. The Writ Petitions and the Letters patent Appeal are, therefore, dismissed.