
(1991) 05 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4057 of 1989

Dr. Virendra Mohan Rai Khangar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 341(1), 342, 342(2)

Citation : AIR 1992 All 147

Hon'ble Judges : V.N. Khare, J; M.P. Kenia, J

Bench : Division Bench

Advocate : Saudama Ji Shandilya and Vivek Shandilya, for the Appellant;
Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M. P. Kenia, J.—Parties have filed their counter and rejoinder affidavits and at the admission stage itself this writ petition is being finally disposed of in accordance with the Rules of this Court.

2. The petitioner by means of the present writ petition has sought issuance of a writ in the nature of mandamus directing the Union of India through the Secretary Ministry of Home Affairs, New Delhi to declare the Khangar Community as a Scheduled caste in Uttar Pradesh. The petitioner is a medical practitioner in the town of Chirgaon situated in district Jhansi where he has opened a nursing home after passing his M.B.B.S. The petitioner belongs to the Khangar community which according to the petitioner has been recognised as a Scheduled Caste with respect to the States of Madhya Pradesh, Maharashtra and Rajasthan. It is the case of the petitioner that the Khangar community is mainly the inhabitant in the area of Bundelkhand which has been divided in between the States of Madhya Pradesh and Uttar Pradesh, that once upon a time this community was found in five districts of Uttar Pradesh and atleast five districts of Madhya Pradesh. Petitioner contended that in Bundelkhand every big State before independence used to keep a independent Khangar Regiment in their

Artillery. Petitioner has further contended that the social stature of the community even today is financially, educationally and religiously backward and they are at par with other caste and communities. Petitioner has further stated that according to the Constitution (Scheduled Caste) Order, 1950 as amended the Khangar community has been recognised as scheduled caste throughout the State of Madhya Pradesh but has not been so recognised in relation to the State of Uttar Pradesh though the existing condition of this community (in both the States) has the social stature stands on the same footing. The petitioner further goes on to contend that reservation is declared for a community by the Union of India on the basis of materials placed by the State Government after assessing the present and past condition of that particular community in the particular State the petitioner has gone on speculate that in State of Uttar Pradesh the Khangar community has not been included in the list of scheduled castes probably because the Government of Uttar Pradesh has not produced relevant material in respect of the community before the Central Government to enable its inclusion in the list of scheduled castes with regard to the State of Uttar Pradesh in order to ensure actual determination of members of Khangar community residing in Uttar Pradesh as in case of the members of the said community who reside in the States of Madhya Pradesh and Rajasthan. The petitioner has sought the issuance of a writ of mandamus directing the respondents to declare the Khangar community as scheduled caste in relation to the State of Uttar Pradesh.

3. It must at once be made clear that in our view it is not competent for this or any other court to issue such a writ. Article 341 of the Constitution of India reads as follows:

"Article 341. Scheduled Castes -- (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 castes, races, or tribes or parts of groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clauses shall not be varied by any subsequent notification."

Under clause (1) the President may with respect to any State or Union Territory after consultation with the Governor thereof, by public notification, specify the castes or groups within such caste which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State. The object of clause (1) of the aforesaid Article 341 is to avoid all disputes as to whether a caste is a scheduled caste or not for the purposes of the Constitution in relation to a particular State or Union Territory. All that has to be done is to make a reference to the President's notification issued under the Art. 341(1) and

find out whether the caste or community in question has been specified as a scheduled caste for the purposes of the Constitution of India in relation to the State concerned. Admittedly, the Khangar community or caste has not been declared and recognised as a scheduled caste in relation to the State of Uttar Pradesh for the purposes of the Constitution of India. That being so, it is not open to this or any other court to declare or direct that the caste be recognised as a scheduled caste in relation to the State of Uttar Pradesh for the purposes of Constitution. This can only be done as provided under Art. 341(2) by Parliament by law and except as aforesaid any notification issued under clause (1) of the Art. 342 is not capable of being varied even by any subsequent notification.

4. In *Bhaiyalal Vs. Harikishan Singh and Others*, the Supreme Court held that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art. 341 one has to look at the public notification issued by the President in that behalf. In the case before the Supreme Court the notification in question referred to Chamar, Jatav and Mochi castes while the plea of the appellant was that though the appellant was not a Chamar as such he would claim the same status by reason of the fact that he belongs to the Dohar caste which was a sub-caste of the Chamar caste. The Court held that the enquiry which the Election Tribunal, which had to consider the aforesaid question, could hold was whether or not the appellant was a Chamar, Jatav or Mochi and that an enquiry of the kind suggested by the appellant before the court could not be permissible having regard to the provisions contained in Art 341.

5. Mr. Sudama Ji Shandilya, the learned Advocate appearing on behalf of the petitioner argued that it was not competent for the President to recognise the Khangar caste as a scheduled caste only in respect of the State of Madhya Pradesh, Rajasthan and Maharashtra and that it should also have been declared as recognised for the purposes of any other State whether the said Khangar community is to be found and more particularly in the State of Uttar Pradesh. Reference to the provisions of clause (1) of Art. 342 referred to above, negates such a contention. Indeed in the aforementioned case the Supreme Court had occasion to consider an argument that the declaration under Article 341(1) had to be in respect of the entire State and it could not be confined to certain districts or sub areas of the State in question. Even the argument that it had necessarily to be in respect of the entire State was negated as is evident from the contents of para 10 of the aforesaid judgment, which are being reproduced below:

"10. Mr. Chatterjee attempted to argue that it was not competent to the president to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the State. His argument was that what the President can do under Art. 341(1) is to specify the castes, races or tribes or parts thereof but that must be done in relation to the entire State or the Union territory, as the case may be. In other words, says Mr. Chatterjee, the President cannot divide the State into different districts or sub-areas and specify the castes, races or

tribes for the purpose of Art. 341(1). In our opinion, there is no substance in this argument. The object of Art. 341(1) plainly is to provide additional protection to the members of the Scheduled Caste having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to Parts of or groups within the castes, races or tribes and that must mean that after examining the educational and social backwardness of a caste, race or tribe the President may well come to the condition that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State but in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. Therefore, Mr. Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Art. 341(1)."

6. Of Course the instant case it is no body's case that the Khangar community has been recognised only in respect of certain parts or districts of Uttar Pradesh and not in respect of the other parts. It appears that the President in notification specified the Khangar community recognising the same as a scheduled caste for the purposes of Constitution in relation to the States of Madhya Pradesh, Rajasthan and Maharashtra. The State of Uttar Pradesh has not been included in the aforesaid notification recognising the Khangar community as scheduled caste for the purposes of Constitution. This can only be done in accordance with the provisions of Clause (2) of Art. 342 and it is not competent for this or any other court to issue a writ of mandamus directing the Union of India to declare the Khangar community as scheduled caste in relation to Uttar Pradesh.

7. Shri Shandilya has relied upon certain guidelines contained in Swamy's Compilation on Reservations and Concessions for Scheduled Castes and Scheduled Tribes referring to a note under the cases of migration apart from the fact that the aforesaid "guidelines" which find inclusion in the aforesaid compilation by the author concerned cannot override the specific provisions of the Constitution even in the said guidelines it is stated that "Where a person migrates from one State to another he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belonged

and not in respect of the State to which he has migrated." The correct test of course is as noted above whether the President has in relation to any particular State accepted the caste concerned as scheduled caste for the purposes of the Constitution and as noted above the President has not been pleased to accept the Khangar Community as a Scheduled caste in relation to the State of Uttar Pradesh.

In the circumstances, the petition fails and the same is dismissed. There shall be no order as to costs.

8. Petition dismissed.