
(2008) 01 CHH CK 0003
In the Chhattisgarh High Court
Case No : W. P. No. 5793 of 2005

Kamta Prasad and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 342, 366

Citation : AIR 2008 Chh 47 : (2008) 2 MPJR 33

Hon'ble Judges : Sunil Kumar Sinha, J; L.C. Bhadoo, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

L.C. Bhadoo, J.—Heard on admission.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioners who are claiming to be "Bhoriya" caste, have questioned the legality, validity and correctness of the order dated 28-4-2005 (Annexure P-1) passed by the Deputy Secretary, Government of Chhattisgarh, Adim Jati Tatha Anusuchit Jati Vikas Vibhag, Raipur, whereby the learned Deputy Secretary gave direction to the effect that the memo dated 8-5-2003, issued by the State Government in connection with Bhoriya caste people who are residing in Korba District regarding issuance of certificate in the name of Bhariya Scheduled Tribe, stands cancelled with immediate effect.

3. Shorn of unnecessary details, facts giving rise to the present writ petition are that by Presidential Orders under Article 342 of the Constitution of India, the persons belonging to Bhariya.-Bhumia, Bhuihar-Bhumia, Bhumia, Bhariya, Paliha, Panodo, residing in Chattisgarh area were included in the list of Scheduled Tribe. It appears that Scheduled tribe Certificate was not being issued to the persons belonging to Bhariya caste, then they approached the State of Chhattisgarh and considering their grievances, the Deputy Secretary, State of Chhattisgarh, issued the memo dated 8-5-2003 whereby the Collector, Bilaspur, was directed to issue

directions to the Sub Divisional Officer & Tahsildar, Katghora & Korba that Bhoriya caste people be issued the Schedule Tribe Certificate as they were being issued such certificates prior to 1998 and that be restored. It appears from para 5 of reply filed by the State that later on they realized the mistake in issuing the memo dated 8-5-2003, therefore, they passed the order dated 28-4-2005 (Annexure-1) cancelling the memo dated 8-5-2003 and the position existing before 8-5-2003 was restored.

4. Dr. Shukla argued that Bhoriya is the same caste as Bhariya caste people, they follow the same customs and rituals and that is why after concluding enquiry and on the basis of recommendation made by the Commission for the Scheduled Caste and Scheduled Tribe, the memo dated 8-5-2003 was issued, therefore, the impugned order 28-4-2005 (Annexure P-1) is illegal and the same be quashed,

5. Having heard counsel for the parties, we have perused the record.

6. Article 342 of the Constitution of India, envisages that the President of India to issue Notification declaring the specified caste to be Scheduled Tribe. That reads (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be, (2) The Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

7. Article 342 came up for consideration and interpretation before the Supreme Court in the matter of State of Maharashtra and Others Vs. Mana Adim Jamat Mandal, where in para 9 of the judgment, the Supreme Court held that no authority, other than Parliament by law, can amend the Presidential Orders. Neither the State Government nor the Courts nor the tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in the Presidential Orders in one entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within the Presidential Orders when it is not so expressly included or exclude a particular caste or tribe or group of castes or tribes when they are expressly included. In the matter of Dadaji alias Dina Vs. Sukhdeobabu and Others, , the Apex Court held that apart from Article 366(25) of the Constitu-1 tion, there is no other definition of the ex-expression

"Scheduled Tribes". Scheduled Tribes are, therefore, only those which are deemed under Article 342 of the Constitution to be Scheduled Tribes. Hence in order to find out whether a community is a Schedule Tribe or not, we have only to see the order which is made under Article 342 of the Constitution.

8. In view of the above position of law laid down by the Apex Court, the State Government or the Authorities have only to see the order which is made under Article 342 of the Constitution of India and no authority is entitled to hold enquiry and take evidence to declare that a caste or tribe or part of or a group within a caste or tribe is included in the Presidential Orders in one entry or the other although they are not expressly or specifically included that means in the Presidential Orders, the caste which has been declared as a Schedule Tribe has to be included expressly and specifically.

9. In light of the above, if we peruse the Presidential Orders issued in respect of Scheduled Tribes of Chhattisgarh at Serial No. 5, only Bhariya-Bhumia, Bhuihar-Bhumia, Bhumia, Bhariya, Paliha, Panado have been included in the list of Scheduled Tribe. No where Bhariya, to which the petitioners claim to be tribe, has been included in the list, therefore, neither the State Government nor any authority nor the Commission for Scheduled Caste and Scheduled Tribe is entitled to issue any direction or conduct any enquiry for including the caste Bhoriya in the list of Scheduled Tribes. In view of the above, we do not find any illegality or infirmity in the impugned order dated 28-4-2005 whereby the State Government has been pleased to recall its memo dated 8-5-2003 by which the Collector Bilaspur was directed to further direct the Sub-Divisional Officer, Tahsil Khatghora and Korba to include Bhoriya in Bhariya for the purpose of considering them as Scheduled Tribe.

10. Thus petition being misconceived is liable to be dismissed and the same is dismissed at the motion stage itself.