
(1991) 09 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 837 of 1990

Krushna Chandra Bariki

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Citation : (1991) 2 OLR 504

Hon'ble Judges : B.L. Hansaria, C.J;A.K. Padhi, J

Bench : Division Bench

Advocate : Deepak Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—Claiming to be a member of Scheduled Caste, the petitioner filed an application before the competent authority as envisaged under the Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rule, 1980 (hereinafter referred to as the "Rules"). As the application of the petitioner was rejected by the competent authority on the ground that the petitioner does not belong to a Scheduled Caste community, he has approached this Court.

2. Admittedly petitioner belongs to "Radhi" community. Relying on the documents filed, Sri Misra for the petitioner submits that "Radhis" are a class of "Kaibarta" or "Keuta" which is synonymus with "Dewar". "Dewar" is included in the Constitution (Scheduled Castes) Order, 1950. in *Narayan Behera v. State of Orissa through Secretary, Tribal and Welfare Department and Ors.* 49 (1980) CLT 47 it has been decided that:

"We have just indicated that according to Clause 2 of the Scheduled Caste Order, the castes, races or tribes or parts thereof as specified in the Schedule are to be taken as Scheduled Castes. Dhibara is a caste and traditionally it refers to the community engaged in (he trade of fishing and rowing of boats. Etymologically derived from the root "Dhi" the word Dhibara refers to the

persons engaged in catching of fish. In the "Purna Chandra Oriya Bhasakosh" which is an accepted authority, the meaning of the word "Dhibara" has been given as "those whose occupation is catching fish." As we have already indicated, Dhibara is not a community as such and essentially refers to that section of people in the Society which take to the profession of catching fish.....Adopting the substance of the ratio, it should follow that when there is no community known as Dhibara as such and Dhibara essentially refers to a profession, Kaibartas and Keutas who are traditionally accepted to belong to Dhibara profession should be taken as included in the term Dhibara."

Relying on the above decision, Mr. Misra submits that since the petitioner, who belongs to "Radhi" community is by caste a "Keuta" he comes within the "Dewar" community which is one of the communities of Scheduled Caste in Orissa by Presidential order.

3. Learned counsel for the State raises the question of maintain- ability of the writ application and submits that :

(a) since the alternate remedy of appeal under Rule 9 of the Rules was available to the petitioner, writ application should be rejected ; and

(b) since the petitioner belongs to "Radhi" community which is not included in the Presidential order, no Caste Certificate can be granted to the petitioner and therefore the writ application should be dismissed.

4. The maintainability of the writ application is raised before us as the petitioner did not avail the alternative remedy of appeal as provided under Rule 9 of the Rules, but as the writ application has already been admitted by this Court, in our opinion since the petitioner is seeking for a declaration, instead of asking the petitioner to avail the appellate forum, the question should be decided here. Therefore we are proceeding to merits.

5. The moot question which arises for consideration is whether the petitioner who belongs to "Radhi" community comes within the purview of Scheduled Caste list as declared in the Presidential order.

6. Rule of the Rules prescribes the mode of verification of castes which reads as follows :

"Verification of caste__Where a person claims to belong to Scheduled Caste or Scheduled Tribe it should be verified-

(1) that the person and his parents actually belong to the community claimed ;

(2) that the community is included in the Presidential order specifying the Scheduled Castes and Scheduled Tribes in relation to the State of Orissa ;

(3) that the person belongs to the State of Orissa and to the area in respect of which the community has been scheduled ;

(4) if a person claims to be Scheduled Caste, he may profess any religion."

According to Sub-rule (2) of Rule 4, a petitioner claiming a certificate must belong to the community included in the presidential order specifying the list of Scheduled Caste.

7. Mr. Misra places reliance on the "Purnachandra Ordia Bhas- kosha" in which "Radhi" is described as

- (i) a low class of untouchables.....same category as sweepers ;
- (ii) one type of "Keuta" (they only Prepare "Chuda" they do not catch fish);
- (iii) a class of maker of "Chuda" (flattened rice).

Annexure 1 is a Caste Certificate issued to the father of the petitioner in the year 1986 on the ground that he comes within the Scheduled Caste list. Under Annexure 2 in Misc. Case No. 1114 of 1981, the father of the petitioner was certified to be belonging to sub-caste of "Kaibarta". Annexure 3 is another Scheduled Caste Certificate issued to the father of the petitioner. Annexure 5 is the record-of-right in which father of the petitioner has been described as "Keuta". Annexure 6 is an extract of the Orissa District Gazetteers prepared in the year 1977 of the department of Revenue of the Government of Orissa, In the same it has been stated :

"The Keutas or Kaibartas are fishermen by caste. They are divided into more than half a dozen endomalous groups, viz" Dhibara, Niari, Rarhi, Machbua, Siuli, Kedar, Girigiria and Nawri. The Dhibaras buy boats and fish in rivers. The Niaris apart from fishing prepare flattened rice and ply boats....."

Annexure-7 is a copy of the letter No. 1469/THIRTI, dated 26-5-1982 of the Director, TH R N, Bhubaneswar addressed to the Deputy Secretary to Government H & T W Department, Bhubaneswar wherein it has been stated:

"A study of Caste status of finishing communities of Orissa was taken up by the Tribal and Harijan Research-cum-Training Institute at different localities of the district of Puri, Cuttack, Balasore and Ganjam. The field study reveals that there are various communities which come under the group of fishing men. One of them is Kaibarta.

In Orissa there is no distinction between Kaibarta and Keuta as found in some other States In Orissa the Kaibartas is synonym of Keutas. The study reveals that Siuli-Kaibarta Das-Kaibarta Niari-Kaibarta or Radhi-Kaibarta and Gokha-Kaibarta. The traditional occupation of all the sections of Kaibartas is fishing except the Niari section whose original occupation is preparation and selling of flat rice. The Niari-Kaibartas are also known as Radhi-Kaibarta. Fishing is their subsidiary occupation.

It has been further stated in the Sitter that :

"Thus from the above statement, it is seen that Niaris and Radhis are sections of Keuta or Kaibartas In some areas the field study reveals that there is no

distinction between Niari and Radhies. They are synonymous terms. According to the judgment of the Orissa High Court Keuta and Kiibartas and Dhibara communities have to be treated as synonymous names of lower Community which has already been specified in the Scheduled Caste list in relation to the State of Orissa. If Keuta or Kaibarta are eligible to get the benefits provided to the Scheduled Caste the Niaries or Radhies who are a section of the Keutas or Kaibartas should not be debarred from such type of privileges."

Annexure-8 is a letter No. Bmp. (iv) 22/88-27373/HTW dated 31-8-1988 from the Special Officer-cum-Under Secretary to Government H&TW Department addressed to the Collector, Dhenkanal. This letter was written for clarification regarding issuance of Caste Certificates in favour of members of "Keuta", "Kaibartas" and "Dhibaras". In the said clarificatory letter the District Welfare Officer, Cuttack wrote that "Chudakuta", "Mudhibhaja" are occupational activities, but not distinct Caste groups. Persons belonging to "Keuta" community to be treated as synonymous of "Dewars" community and be issued with Scheduled Caste Certificates. Annexure-9 is a letter dated 7-11-1990 from the Under Secretary to Government to Commissioner-cum-Secretary to Government of Orissa, Harijan and Tribal Welfare Department, Bhubaneswar wherein it has been stated :

" I am directed to say that the committee on welfare of Scheduled Castes and Scheduled Tribes in their meeting held on 6-11-1990 have opined that the "Radhies" and "Niaries" should be included in the approved list of Scheduled Castes of State level committee to enable them for all benefits as per provisions of State Government."

8. The State has filed return. In the return the only ground in paragraph 7 it has been stated that :

".....Accordingly, the Addl. Dist. Magistrate, Cuttack instituted a Misc. Case bearing No. 56 of 1987 and called for a report from the Tahasildar, Jajpur vide office letter No. 284 dated 9-2-1987. Accordingly, the Tahasildar, Jajpur furnished his report in his letter No. 1481 dated 19-2-1987. The said report indicates that the applicant belongs to "Radhi" by Sub-caste and their profession is to prepare flattened rice and puffed rice (Chuda Kutiba) locally they are called as "KAIBARTA", But fishing is not their profession....."

Various documents have been annexed to the return filed by the State. Annexure-A, a circular issued by the Government of Orissa in the Harijan & Tribal Welfare Department it has been indicated that in view of the judgment of the High Court "Keuta", "Kaibarta" and "Dhibara" community have to be treated as synonymous names of "Dewar" community which has already been specified in the Scheduled Caste list in relation to the State of Orissa. But formal inclusion of the names in the list of Scheduled Caste cannot be done without a legislation being enacted by Parliament in that regard. It was further indicated that Scheduled Caste Certificates can be issued to persons belonging to the community entered in the

Presidential order. Annexure-B, a letter from the Deputy Director-cum-Deputy Secretary to Government in Hirijan and Tribal Welfare Department addressed to the Collector, Phulbani which is by way of clarification regarding issuance of Caste Certificates states that:

".....I am directed to say that Keuta, Kaibarta and Dhibara community who are traditionally engaged in "fishing" and boating have to be treated as synonymous names of "Dewar" community. The Sch. Caste Certificate to the eligible persons will be valid only if they are issued in the relevant name of the community entered in the Presidential Order i. e. "Dewar" of the Sch. Castes and Sch. Tribes Orders (Amendment) Act, 1976 and the judgment of the High Court and Supreme Court embodied in C/I letter No. B. C. 12016/27/80-SC / BDO-IV dt. 13-5-1981 enclosed In this Department circular letter No. 17659 dt. 20-7 1981."

Annexure-C is a letter which is relied on by the counsel for the State to show that persons belonging to the "Radhi" community are not to be included in the Scheduled Caste list which reads as follows :

"With reference to your letter No. 4828/CL dated 27-9-1980 on the subject noted above I am directed to say that no decision has been taken to treat the Radhi and the Niary communities as synonymous to Dewar community and as such the question of Issue of Caste Certificate in favour of Radhi and Niary communities as Scheduled Caste does not arise."

9. In *The Revenue Officer and others Vs. Prafulla Kumar Pati and others*,), question arose as to whether a person belonging to "Rajak" community which community is not included in the list appended to the Constitution (Scheduled Caste) Order, 1950 can be declared as a Scheduled Caste. Taking into consideration the meaning of "Dhobak" and other circumstances it has been held that "Rajak" is synonym of caste "Dhoba" and according to Purna Chandra Oriya Bhasakosh which is a recognised authority, the definition of "Dhoba" is "Rajak washerman. As such, the submission that the caste "Rajaka" is different from caste "Dhoba" is not sustainable.

In 49 (1980) CLT 47 (supra) it has been authoritatively pronounced that in Orissa "Kaibartas", "Keutas", "Dhibaras" are synonymous to "Dewar" community which is included in the Scheduled Caste list. From Purna Chandra Oriya Bhasakosh and from, all annexures as mentioned above, it is clear that though the occupational activities of "Radhi" communities is "Chudakuta" they are by caste "Keuta" or "Kaibarta" which caste is synonymous to that of "Dewar" and therefore such community comes within the Scheduled Caste list as per the Presidential order. Therefore in our opinion the petitioner is entitled to be issued with a Scheduled Caste Certificate as he belongs to "Radhi" community who are by caste of "Keuta" which has already been declared as synonymous of "Dewar" by judgment pronounced in 49 (1980) CLT 47 (supra).

10. In the result, we allow the writ application and quash Annexure-4 and direct opp. party No. 2 to issue a Scheduled Caste Certificate in favour of the petitioner.

B.L. Hansaria, C.J.

I agree.