
(1979) 11 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 247 of 1978

Narayan Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-11-1979

Acts Referred:

Constitution of India, 1950 — Article 341

Citation : (1980) 49 CLT 47

Hon'ble Judges : R.N. Misra, J; N.K. Das, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner passed the D.H.M.S. Examination from the Government Homoeopathic Medical College at Bhubaneswar and was an applicant for the post advertised by the opposite party No. 3 vide Annexure-9 and attached a certificate granted by the Sub-Divisional Officer, Khurda to the effect that the Petitioner is a member of the Scheduled Castes as he is of Dewar community. After interview, Petitioner was duly selected for appointment as a Homoeopathic Medical Officer, but was flat given the appointment. Petitioner gathered that the appointment was not being Issued as the opposite parties were of the view that the Petitioner did not come within the ambit of the Presidential Order under Article 341 of the Constitution. He has, therefore, made this application for a direction to the opposite parties to proceed on the footing that Petitioner belongs to the Scheduled Castes and should be given public appointment for which he has been duly selected. Petitioner has relied upon a series of correspondences between the State Government and the Government of India and their respective officers.

2. The Deputy Secretary to Government in the Tribal and Rural Welfare Department has given a counter affidavit on behalf of the opposite parties

wherein it has been stated that the Collector of Puri vide Annexure-A reported that the Petitioner is a Kaibarta and, therefore, not covered by the Scheduled Castes Order. Reliance has been placed on some correspondence between the State Government and the Central Government in support of the stand of the opposite parties. Petitioners has thereafter filed a rejoinder and has relied upon a certificate given by the Collector of Puri under Annexure-I0 to the effect that Petitioner belongs to the Dewar community. The under-Secretary to Government in the Tribal & Rural Welfare Department filed a further affidavit in support of the stand of the opposite parties.

3. Article 341 of the Constitution provides

(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 or 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 clause shall not be varied by any subsequent notification.

In exercise of the powers contemplated by the Article, the Constitution (Scheduled Castes) Order, 1950, came into existence as early as August. 1950. by several Parliamentary enactments, the List has undergone amendments. Clause 2 of the Order provides:

Subject to the provisions of this Order the castes, races or tribes or parts of, or groups within castes or tribes, specified in Parts I to XVIII of the Schedule to this Order shall in relation to the States to which those Parts respectively relate be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule.

So far as the State of Orissa is concerned, entry No. 24 is Dewar. In the communication of the Ministry of Home Affairs dated 8-5-1957 to the Secretary to the Government of Orissa in the Tribal & Rural Welfare Department (vide Annexure-I), it was stated:.

...The Government of India presume that the absence of this letter "h" in the word Dewar will not operate to the disadvantage of the case. Since the list can be modified only by a Parliamentary legislation it is necessary that this lacuna should not be allowed to operate against them....

From Annexure-2 which is a communication from the Assistant Commissioner for Scheduled Tribes and Scheduled Castes of Orissa to the Assistant Commissioner of Scheduled Castes and Scheduled Tribes, Government of India. New Delhi, it appears that Dewar and Dhewar were considered to be synonymous and there was no community in the State known as Dewar. From Annexure-3. it appears

that the State Government informed the Collector of Ganjam that Dewar should be read as Dhewar. The principle indicated by the Constitution Bench of the Supreme Court in the case of B. Basavalingappa Vs. D. Munichinnappa, directly supports the position that Dewar should be read as Dhewar. Whether it is Dewar or Dhewar, it is common ground before us that the real community to which reference is intended to have been made is Dhibara, community traditionally engaged in fishing, boating et cetera.

Law is fairly settled that the public notification contemplated in Article 341 is the final word in resolving a dispute as to which communities belong to the Scheduled Castes and it is not for the Court to add to or take away from the Schedules in the Notification. To that effect are the decisions of the Supreme Court in the case of Bhaiyalal Vs. Harikishan Singh and Others, , and Bhaiya Ram Munda Vs. Anirudh Patar and Others, . In several cases, this Court has also taken the same view. See Bimala Peria v. Thabir Dandia and Ors. 1973 (2) C.W.R. 990 and Prasana Mishal v. Jain Jamana and Ors. 1977 (2) C.W.R. 611.

4. We have just indicated that according to Clause 2 of the Scheduled Castes 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 the 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 Bhashakosh" which is an accepted authority, the meaning of the word "Dhibera" 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. The Supreme Court indicated in B. Basavalingappa Vs. D. Munichinnappa, .

...As the President could not have included in the Order a non-existent caste, it means the word "Bhovi" relates to some caste in Mysore as it was before 1956 and we have, therefore, to establish the identity of that caste and that can only be done by evidence. In that connection the High Court has held that ever since the Order of 1956, the Voddar caste has been variously spelt as Bayi, Bovi, and Bhovi in English, though the Kannda equivalent is one and the same....

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 Dhibera.

It may not be inappropriate to indicate here that the State Government had taken this stand in several communications to the Union Government though the Central Government had not accepted the recommendations of the State Government on the ground that under the Constitution it is not open to the President to make any amendment to the Order.

5. We are inclined to accept the Petitioner's stand that he belongs to the Dhibara

community and the Collector of Puri had rightly given him the certificate under Annexure-10, Now that we have found the Petitioner to be of the Scheduled Castes, it must follow that the opposite parties should issue the appointment for the post to which the Petitioner has been selected.

6. The writ application is accordingly allowed and the opposite parties are called upon to issue the appointment to the Petitioner subject to any other rules or conditions as may be applicable. The Petitioner shall have costs of the petition. Hearing fee is assessed at rupees one hundred.

N.K. Das, J.

7. I agree.