

(1998) 09 OHC CK 0015

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2318 of 1998

Narayan Sahoo

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Constitution of India, 1950 — Article 341
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (1999) 1 OLR 181

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : S.D. Das, A.K. Nayak, L. Samantaray, H.S. Satapathy, B. Pattnaik, B.K. Sinha, Archana Mohanty and D. Dhar, for the Appellant; R. Patnaik, A.S.C., for the Respondent

Judgement

P.K. Tripathy, J.—Short but substantial question which has been raised in this application u/s 482 of the Criminal Procedure Code, 1973 (in short, "the Code") is as to whether a caste not notified as Scheduled Caste in the Presidential Order and Notification under Article 341 of the Constitution can be regarded as Scheduled Caste being described in that manner in the District Gazetteer.

2. Relevant facts may be indicated for reference. Petitioner is one of the accused persons in T.R. No. 25/28 of 96-95 of the Court of Addl. Sessions Judge-cum-Special Judge, Khurda. In that case cognizance for the offence under Sections 323, 324, 506/34, IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, "the Act") has been taken. On 5.11.1996 petitioner filed an application challenging the order of taking cognizance of the offence u/s 3 of the Act, on the ground that the informant being a "Khatia" by caste and not being "Katia" by caste is not a member of the Scheduled Caste as per the Presidential Order and, therefore, petitioner cannot be prosecuted for the offence u/s 3 of the Act. In his order dt. 11.5.1998 (impugned order) learned Special Judge rejected the aforesaid contention of the

petitioner on the ground that in the Puri District Gazetteer, both "Katia" and "Khatia" have been included within the category of Scheduled Castes in the district of Puri. Learned Special Judge also took note of the fact that in the record of right the informant has been described as a person belonging to "Khatia" caste.

3. Mr. S.D. Das, learned counsel appearing for the petitioner advanced argument reiterating the same point which was canvassed before the trial Court and relying upon authorities from the Supreme Court and this Court he argued that save and except following the provisions in Article 341 of the Constitution there cannot be any addition or subtraction of the caste in the Presidential Order wherein the castes belonging to Scheduled Caste groups have been enlisted. Learned Addl. Standing Counsel without disputing to the aforesaid argument replied that learned Special Judge without proper assessment of the evidence in the case diary has disposed of the matter simply with reference to the record of right and the District Gazetteer and therefore, factual assertion as to whether the informant is "Katia" by caste or "Khatia" is a matter which should be ascertained by the trial Court from the statements available in the case diary.

4. Section 3 of the Act provides for punishment of offences of atrocities committed against person or persons belonging to Scheduled Caste or Scheduled Tribe by a person or group of persons not being member of Scheduled Caste or Scheduled Tribe in any manner described in Clauses (i) to (xv) of Sub-section (1) and Clauses (i) to (vii) of Sub-section (2) in Section 3 of the Act. Clause (c) of Sub-section (1) of Section 2 defines the term "Scheduled Caste" and "Scheduled Tribe" and reads as hereunder:

"(c) Scheduled Castes and Scheduled Tribes shall have the meaning assigned to them respectively under Clause (24) and Clause (25) of Article 366 of the Constitution."

As a corollary on a reference to Clause 24 of Article 366 of the Constitution, it reads that --

"(24) "Scheduled Caste" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution."

Article 341 reads as hereunder :

"341 (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."

5. Language used in Article 341 is self-explanatory to the effect that castes, races or tribes or groups within castes, races or tribes notified according to the Presidential Order in accordance with the provision in Article 341(1) can only be regarded as Scheduled Castes and a caste not finding place in the list notified as per the Presidential Order cannot be regarded as a Scheduled Caste. Any modification in that list by addition or deletion can only be made by following the provisions of law in Article 341(2). Thus the position of law is very clear that the castes, races or tribes or groups within the castes, races or tribes which have been notified as per the Presidential Order made under Article 341(1) has to be accepted on its face value and the Courts or any other authority (except the President of India and the Parliament) has no jurisdiction to add or delete from that list. In that connection, some leading decisions which have been cited by the petitioner may be referred to. In the case of Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, , the Apex Court while in seisin of the matter as to whether all the persons belonging to Thandan Caste, though some of them alleged to be not belonging to Scheduled Caste community, can be regarded as member of the Scheduled Caste by virtue of the Presidential Order under Article 341. After referring to a series of previous decisions it was held that --

"18.....the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence led in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid."

In the case of Neikham Surchandra Singh and Ors. etc. v. The Representative of "Lios" Kakching, Manipur (a Scheduled Caste Uplift Body) and Ors. : 1996 (8) SC 229 considering a similar question relating to "Lois; caste, the Apex Court held that neither the Court nor the State Government has any power to add or subtract from the list published and the order by the High Court for an enquiry was found not correct in law. Their Lordships further held that :

".....The retrograde attempt to grab the benefit of and distributive justice to the targetted group was held to be prevented. It would thus be clear and we hold that until the Presidential notification was modified by appropriate amendment by Parliament in exercise of the power under Article 341(2) of the Constitution, the Presidential notification issued under Article 341(1) is final and conclusive and it cannot be added to any caste or subtracted by any action either by the State Government or by a Court on adduction of evidence."

In the case of Rama Chandra Sahoo v. Collector, Mayurbhanj and Ors. : 82 (1996) CUT 155, the point for consideration before the Division Bench of this Court was as to whether "Koduma" Caste is synonymous and/or included in "Kandara" Caste which has been notified to be a Scheduled Caste under Article

341. After referring to several decisions from the Apex Court this Court also held that there cannot be any addition or subtraction from the list prepared under the Presidential notification in accordance with provisions in Articles 341 and 342 of the Constitution. In the case of *Krupasindhu Sahu v. Hindustan Aeronautics Limited*, an unreported case vide OJC No. 65106 of 1994 decided on 4.3.1998 a Division Bench of this Court held that :

"The Apex Court in the recent decision reported in AIR 1996 SCW 782 (*Nityananda Sharma and Anr. v. State of Bihar*) (*supra*) clearly laid down in paragraph-14 thereof that the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe. This is a very relevant and important finding of the Supreme Court and the same is very much binding upon this Court. This Court cannot conclude that "Niari" is a sub-caste or is synonymous to another caste. Admittedly "Niari" is not in the Presidential list. As the Court cannot conclude by any evidence or otherwise that it is a synonymous to another caste or is a sub-caste, the ratio of the decision in the case of *Sanatan Mangal* loses all importance. In view of the contentions and counter-contentions of the respective parties as noted above, we find sufficient force and merit in the submission of Mr. Murty that the petitioner cannot claim any benefit as a member of the Scheduled Caste being "Niari"....."

7. Briefed with the above settled position of law and on making a reflection of facts, it appears that in the Notification made under the Presidential Order i.e. the Constitution (Scheduled Castes) Order, 1950 (as amended from time to time) so far as it relates to the State of Orissa, "Katia" appears as a Scheduled Caste vide Serial No. 44 in that list. "Khatia" caste is not there in that list. Hence, if at all "Khatia" caste has been defined as a Scheduled Caste in the Puri District Gazetteer, that being not a part or parcel of the Presidential Order made under Article 341, such description (if any) in that Gazetteer does not qualify "Khatia" as a Scheduled Caste under Arts. 341 and 366 of the Constitution and u/s 3 of the Act.

8. As rightly argued by learned Addl. Standing Counsel the Special Court only referred to the record of right and District Gazetteer of Puri and recorded the finding that "Khatia" is a Scheduled Caste though according to the Presidential Order "Khatia"s is not included in the group of the Scheduled Castes. It does not appear from the impugned order that learned Special Judge referred to the statements of the witnesses and other materials available in the case diary to find out as to which caste the informant (complainant belongs and if such caste, race or tribe has been notified as a Scheduled Caste in the Presidential Order. Under such circumstances, the matter is remitted back to the learned trial Court to peruse the statements and other evidence in the case diary and to dispose of the application of the petitioner dt. 5.11.1996 in accordance with law.

9. Accordingly, the impugned order is set aside and the Criminal, Misc. Case is allowed.