

(1993) 12 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3027 of 1993 (R)

Phudnath Kisan Nagesia

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Citation : (1993) 12 PAT CK 0030

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—In this writ application the prayer of the Petitioner is for issuance of writ of mandamus commanding upon the Respondent. Deputy Commissioner, Gumla, to treat; the members of Nagesia tribe as falling in the category of Scheduled Tribe within the meaning of the Constitution (Scheduled Tribe) Order, 1950 (hereinafter "the Order" only) and to grant them all the privileges to which the members of the Scheduled Tribe are entitled to.

2. The Petitioner claims to be a member of Nagesia tribe of the district of Gumla. His grievance is that though in the adjoining districts of Lohardaga and Palamau, Nagesia is treated as scheduled tribe but the said privilege has been denied to the Petitioner and to the other members of his tribe by the Respondent Deputy Commissioner on the plea that in the schedule to the Order Nagesia has not been included as one of the tribes.

3. Mr. D.N. Sinha, learned Counsel appearing for the Petitioner, in support of the claim made in this writ petition, has drawn our attention to various circumstances and documents, which, according to him are sufficient for accepting the Nagesia to be one of the Scheduled Tribes for all Constitutional purposes. He has also placed reliance on a decision of the Supreme Court in the case of Bhaiya Ram Munda Vs. Anirudh Patar and Others, and on a Bench decision of this Court: in the case of Shyam Sunder Nag and Ors. v. State of Bihar and Ors. 1987 BLT 222.

4. A counter affidavit has been filed on behalf of the Respondent Deputy

Commissioner. Learned Counsel appearing for the State by referring to the statements made in the counter affidavit as also by referring to the letter dated 2-12-91 (Annexure 6) filed by the Petitioner, has submitted that admittedly Nagesia tribe does not find place in the schedule to the Order referred to above and, as such, the stand of the Deputy Commissioner that the members of this tribe can not claim the relief sought for in this writ application is unassailable. According to him unless an authoritative decision as permissible in law is taken by the Government, the Deputy Commissioner of his own can not grant any benefit to the members of Nagesia tribe by treating the said tribe to be one of the scheduled tribe.

5. Mr. Sinha has referred to a Government letter dated 15-1-1986 (Annexure 1) which relates to extension of educational facilities in various tribal and non-tribal areas which were dominated by various tribes named therein including Nagesia. This Government communication per se is of no help in ascertaining as to whether Nagesia can be treated to be scheduled tribe or not because for being a scheduled tribe a class of persons should not only be aboriginal but the tribe by which they are known should also find place in the schedule to the Order. Learned Counsel has further referred to an order dated 6.7.88 which is an order passed in a case for restoration of land u/s 71-A of the C.N.T. Act. This order shows that land of one Bihari Nagesia was restored in his favour pursuant to the statutory provisions contained under the aforesaid provisions of C.N.T. Act. This order has been passed pursuant to the statutory provisions as contained under the special Act and is of no consequence for determination of the issue involved. The power u/s 71-A of the said Act are not exercised because a person claiming any right thereunder is a member of the scheduled tribe within the meaning of the Order but is based on the statutory contemplation referable to the tribes referred to therein. Our attention has also been drawn to a letter dated 7-1-92 (Annexure 5) written by the Additional Collector, Gumla, to the. Anchal Adhikari, Raidih, asking the latter that since in Ranchi Gazetteer Kisan and Nagesia have been described as to be belonging to the same caste group, therefore, he should issue caste certificate in favour of one Ramesh Ram Nagesia after necessary verification. In my opinion, this letter can also be of no assistance in determination of the preset issue because personal opinion of any particular officer can not be of any help for determination of the issue like one in hand. The plea that in the adjoining districts of Lohardaga and Palamau the officers are treating Nagesia tribe to be scheduled tribe is also to be rejected for the very said reason.

6. Mr. Sinha has drawn our attention to a material aspect which can be said to have bearing on the issue involved and that is description regarding history and its relationship with Kisan tribe as discussed in Ranchi Gazetteer at page 121 which is to the following effect:

The Kisans, also known as Nagesar and Nagesia are a small tribe who numbered some 4,700 at the census of 1911.

7. In spite of strenuous arguments and persuading submissions made by Mr. Sinha appearing for the Petitioner, I find myself unable to adjudicate the issue involved in the writ jurisdiction, since an enquiry as to whether a particular tribe is or is not a sub-tribe of a scheduled tribe can not be gone into. Mr. Sinha's entire endeavour has been that though only Kisan tribe has been mentioned in the schedule to the Order but on going through the Ranchi Gazetteer and the practice followed in the adjoining districts of Gumla district where the Petitioner resides, it should be held that the word "Nagesia" is only a (sic) given to such members of the scheduled Kisan tribe, who reside in some specified areas. Even this aspect can not be gone by this Court as has been held by the supreme Court in the case of Parsram and Another Vs. Shivchand and Others, .

These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazetteers and the glossaries on the Punjab castes and tribes to which reference was made at the Bar to find out whether mochi and chamar in some parts of the State at least meant the same caste although there might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which mochis do not. However, that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person. was in fact a mochi, he could still claim to belong to the scheduled caste of chamars and be allowed to contest an election on that basis....

8. A similar view has been taken recently by a Bench of this Court to which one of us (G.C. Bharuka, J.) has been a member in the case of Manita Kanaujia v. State of Bihar and Ors. reported in 1993 (2) PLJR 419 wherein it was claimed that caste Tanti (Tatwa) should be treated as scheduled caste "Pan". This judgment has attained its finality since SLP No. (C) 3969/93 filed against this judgment has been dismissed by the Supreme Court on 27-4-93. In para 11 of this judgment, it has been held as follows:

Keeping in view the entry in the Order which does not include caste "Tanti (Tatwa)" as one of the scheduled castes, it is not open for this Court under Articles 226 and 227 of the Constitution of India to enter into any process of adjudication that "Tanti (Tatwa)" is same as "Pan". In my opinion, it is for Parliament in its wisdom to make necessary amendment to place "Tanti (Tantwa)" in the category of scheduled castes if it feels satisfied in this regard on the basis of the report said to have been sent by the State Government.

9. Mr. Sinha has drawn our attention to the judgment of the Supreme Court in Bhaiya Ram Munda case (supra) and on a Bench decision of this Court in the case of Shyam Sunder Nag (supra) to inspire us to enter into the question involved by submitting that in the former case the Supreme Court on the basis of evidence brought before it has held that Patars and Mundas which is a scheduled tribe whereas in the latter case this Court has held that Tamaria are Patar Mundas.

10. In my opinion, the above referred two decisions are not of much consequence for the present purpose. In the first case before the Supreme Court, as has been noticed in para 35 of the report, the plea was that the Patars are Mundas and this was accepted on the basis of oral and documentary evidence adduced in the case arising out of an order of Election tribunal. In the second case, in the pleadings before this Court the parties had admitted that Tamaria are Patar Mundas and it was accordingly so held.

11. In the present case, it is not an admitted position that tribe "Nagesia" is merely a different nomenclature given to the scheduled tribe "Kisan" in certain particular areas of Chotanagpur division. The question is purely of facts and this can not be adjudicated by this Court under its writ jurisdiction.

12. For the reasons aforesaid, I find myself unable to grant any relief to the Petitioner. The writ petition is, accordingly, dismissed but without any order as to costs.

N.S. Rao, J.

13. I agree.