
(1986) 07 OHC CK 0014

In the Orissa High Court

Case No : O.J.C. No's. 1007 and 1008 of 1983

Prafulla Kumar Pati

APPELLANT

Vs

Paramananda Sethi and Others and Smt. Nilamani Sethi and Others

RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

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

Citation : (1986) 62 CLT 236 : (1986) 2 OLR 130

Hon'ble Judges : H.L. Agrawal, C.J.;G.B. Pattnaik, J

Bench : Division Bench

Advocate : M.R. Panda, for the Appellant; Additional Government Advocate (1) For Opp. parties 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : The Revenue Officer and others Vs. Prafulla Kumar Pati and others, AIR 1990 SC 727 : (1990) 69 CLT 732 : (1990) 1 JT 155 : (1990) 1 SCALE 124 : (1990) 2 SCC 162 : (1990) 1 SCR 88 : (1990) 1 UJ 390

H.L. Agrawal, C.J.—Both these writ applications were heard together and are being disposed of by this judgment as the facts and the question of law involved therein are the same and similar, namely, as to whether the Court has to refer only to the Presidential Notification issued under Arts. 341 or 342 of the Constitution of India to determine as to whether any particular person belongs to any Scheduled Caste or Scheduled Tribe notified therein or the Court can look into any other material of circumstances also to give the advantage to any other caste or tribe by reason of the party of functions or vocations followed by the members thereof

2. Although the question has come up for consideration before this Court as also the Supreme Court on several occasions and the same seems to have been fairly

settled, the learned counsel for the petitioner has vehemently urged that it is not possible for the Court to look beyond the Presidential Notification with reference to some of the observations here and there in some of those decisions,

3. Briefly stated, the facts are these:

Opposite party No 1 of the cases had filed applications before the Revenue Officer, Baripada, (opposite party No 2) u/s 23 of the Orissa Land Reforms Act, 1960 (for short "the Act") for restoration of their lands sold to the petitioner and others on the ground that as they were members of the Scheduled Caste, namely, Rajaka, the sales in question were hit by the provisions contained in Section 22 of the Act and have succeeded in getting the orders in their favour which have been separately annexed to these applications.

It may be stated that "Rajaka" is not mentioned in the list appends., co the Constitution (Scheduled Caste) Order, 1950 (for short Presidential Order") as a caste or tribe. This fact is not in dispute but the claim was made by opposite party No. 1 on the basis of entry No. 26, i. e., "Dhoba", "Dhobi" of the List and the certificate of the Additional Tahasildar Betnoti, to the effect that the nature of work performed by the members of the "Rajaka" community was similar to that of "Dhoba, Dhobi". No evidence, however, was led in support of this fact. The Additional District Magistrate has observed in his order that:

"It is a known fact that there is no community called "Rajaka" community which is different from "Dhoba" community. "Rajaka" is only a literary word for the common term "Dhoba"....."

It was submitted that he had made these observations on the basis of the meaning of the word "Rajaka" given in Purnachandra Ordia Bhashakosha (A lexicon of the Oriya language) which gives the following meanings to the word "Rajaka" :.

"(i) Washerman,

(ii) A dyer, and

(iii) Name of a hybrid caste (born of a fisherman father and Tibara mother)".

Clause 2 of the Scheduled Castes Order reads, thus :

"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."

I have already said above that so far as the State of Orissa is concerned, the entry in item No. 26 of the List is "Dhoba", "Dhobi".

Taking this view, the Revenue Authority came to the conclusion that opposite party No. 1 in both the cases were members of the Scheduled Caste and since no previous permission was obtained from the Revenue Officer by them for

transferring their lands in favour of the petitioner and others, the sales were hit by the restriction contained in Section 22 of the Act and, therefore, the transfers were illegal. Accordingly, restoration of the lands in favour of the opposite party No. 1 has been ordered.

Although opposite party No. 1 had appeared through their counsel in this Court, when the cases were taken up for hearing, nobody appeared before us.

4. Learned counsel for the petitioner submitted that no reference can be made to any other material except to the List of the Scheduled Castes issued under the Presidential Order of 1950 and in as much as "Rajaka" was not incorporated in that List, the Revenue Authorities have misdirected themselves in referring to the so-called prevalent meaning of the term "Rajaka".

5. Before entering into any further discussion, let me examine some of the relevant decisions on this question at the first instance of this Court and then of the Supreme Court.

In the case of *Bimala Peria v. Thabir Dandia and others* 1973(2) CWR 990, the question was as to whether a member of "Jara Savar" was covered by the entry "Savar" of the List. It was observed by the Court that there being no classification as "Jara Savar", the List was final and it was not open to the competent authority to construe the entry "Savar" to include also "Jara Savar" on referring to other circumstances.

In the case of *Prasana Mishal v.. Jain Jamana & others* 1977(2) CWR 681, of this Court, the question was as to whether Kampa Saura" could be held to be a Scheduled Tribe within the State, the argument being that although Kampa Saura was not included in the Presidential Order, yet the community Kampa Saura was a section of the major tribe "Saura".

In support of this argument, a letter of the State Government in the Tribal and Rural Welfare Department was pressed into service. This contention was rejected and it was observed :

"...The iewal position has been settled that while examining as to whether a particular person belongs to a scheduled tribe, a Court is not entitled to add or subtract the entry and whatever has been notified in relation to a particular State must be taken as final."

In the case of *Narayan Behera v. State of Orissa and others* 49(1980) CLT 47, the position was, however, slightly different. There the question was whether the community known by the name of "Dhibara, could also be taken to be a Scheduled Caste. The Presidential Notification mentioned only "Dewar". On reference to some other materials, it was found that "Dhibar" community was traditionally engaged in fishing, boating, etc. References in this case were also made to the Purnachandra Ordia Bhashakosha, an accepted authority for knowing the correct meaning of the word "Dhibara" and to the following, observations of the Supreme Court in the case of *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 Boyi, Bovi, and Bhovi in English, though the Kannda equivalent is one and the same. ..."

Adopting the above principle, it was held that since no community was known as "Dhibara", the word essentially referred to a profession, and since the petitioner of that case (Dhewar community) carried on the same trade, it was held that he belonged to "Dhibara" community.

The next case of this Court that was cited on behalf of the learned Additional Government Advocate was K. Adikanda Patra and Others Vs. Gandua and Others, , and it was held that Jarasavars "were a sub-tribe/group within the tribe or tribal community of "Savar" and, therefore, were members of the Scheduled Tribe. In coming to this conclusion the Court referred to certain observations of the Supreme Court in the case of Bhaiyalal Vs. Harikishan Singh and Others, , which run as follows :

"...Thus, the question which arose between the parties for decision in the present proceedings is a question of fact and on this question both the Tribunal and the High Court have made concurrent findings against the appellant. It is true that in reaching their conclusion on this point, the Tribunal as well as the High Court had to consider oral as well as documentary evidence ; but in cases of this kind where the Tribunal and the High Court make concurrent findings on question of fact, this Court does not usually interfere ; and after hearing Mr. Chatterjee we see no reason to depart from our usual practice in this matter."

It is perhaps on the observations of this Court in these decisions that the learned Additional Government Advocate submitted that the Jurisdiction of the Court was not limited and confined to the Schedule but the Court was competent to step forward and interpret and look to the popular meaning and the vocations and activities and compare it with those performed by the members of the notified castes.

I am afraid, in my considered view, is neither of the decisions the proposition has been extended so far. Rather, the observations are just to the contrary that it would not be open to lead evidence to establish that a particular caste or tribe was part of the caste/tribe notified in the Presidential Order.

In Narayan Behera's case (supra) we have already seen the limitation within which the Court proceeded to determine the question of issue.

The decision in the case of K. Adikanda Patra (supra) is also not very much different as the claim was by a member of "Jarasavar" where a "Savar" was already a notified tribe and the enquiry was confined only to find out as to

whether "Jarasavar" was. a sub-tribe (group) within the. notified tribe.

In both the cases the Court did not travel to include any altogether different tribe though it might be performing the same work but only known by a different name in the notified tribe or caste, on the basis of evidence or other materials.

The leading case on this question appears to be of the Supreme Court in Bhaiya Lal's case (supra) reference to which was made in the earlier decision of this Court referred to above. It was very clearly observed in that case that; no enquiry was permissible as to whether a particular sub-caste was included in the caste mentioned in the notification issued under Art. 341 of the Constitution of India to find out as to whether it was a Scheduled Caste.

Similar was the position in the other case of the Supreme Court in the case of Parsram and Another Vs. Shivchand and Others, . Here the question was as to whether a person described as "Mochi" in Punjab could be included in the caste of "Chamara" mentioned in the Presidential Order. It was held that the Court cannot scrutinise the Gazettees and glossaries for this purpose.

In my opinion, the observations of the Supreme Court in the case of Bhaiya Ram Munda Vs. Anirudh Patar and Others, , to the effect that "it may be shown that the name included in the Order is a general name applicable to sub-tribes" and the finding that Patars of Tamar district in Bihar are sub-tribes of Mundas and are not different from Mundas can be of no help to the opposite parties of these cases as it is nobody's case that Rajaka" is a sub-caste of "Dhoba" and that the notified name was the general name, and since Rajakas also/ perform the same nature of work as Dhoba, they should also be given the same protection of Section 22 of the Act as was available to Dhobas.

A perusal of the last two authorities of this Court clearly shows that the area of investigation conferred upon the authority was too limited, namely, to include only such sub-tribes or sub-castes which may be the species of the main caste or tribe notified in the Presidential Order. An altogether a different tribe or caste which cannot be said to be a sub-tribe or group of the mainstream of the notified community cannot be included and cannot by any stretch of imagination, be included by the executive machinery thus giving an extended meaning to the List of communities and tribes notified by the Presidential Order.

6. Considering the cases in hand in the light of the above discussion, I have no hesitation to come to the conclusion that the Revenue Authorities have committed a serious error of law in coming to the conclusion that "Rajaka" caste was included within the notified caste/ community of "Dhoba" as their nature of work was similar. Although it is unnecessary to make any further discussion, I must point out that even on a reference to the Bhashakosha it could not be categorically said that "Rajaka" was a caste which could be said to be a class of washermen as the Bhashakosha itself gives other meanings of this word.

7. The inevitable result and conclusion in my view would be that the petitioner

who is common in both the writ petitions must succeed and the orders passed by the Revenue Authorities be quashed. I accordingly N quash the impugned orders, i. e., Annexures-I and 3. of OJC No. 1007 of 1983 and all the impugned orders, i. e., Annexures-2, 3 and 4 of OJC No. 1008 of 1983.

Since the learned counsel for the private opposite party No. 1 did not appear at the time of hearing, I do. not propose to pass any order as to costs.