

(1991) 09 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 793 of 1990

Sanatan Mangal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Citation : (1992) 73 CLT 208 : (1991) 2 OLR 433

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

Bench : Division Bench

Advocate : S.D. Das, S.K. Samantray, A.K. Choudhury and B.K. Kar, 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 had filed an application for issuance of a caste certificate as envisaged under the Orissa Caste Certificate (for S. C. and S. T.) Rules, 1980 (hereinafter referred to as "the Rules"). As the same was rejected by the competent authority on the ground that he belongs to "Niari" community, not included in the scheduled caste list as prescribed by the Presidential Order, 1950, he has approached this Court.

2. Admittedly, the petitioner belongs to "Niari" community. Relying on the clarificatory letters of the Government, meaning of the "Niari" as given in the Purnachandra Bhasakosh and a decision of this Court Mr. Das, learned advocate for the petitioner submits that "Niari" community are by caste of "Kaibarta" or "Keuta" which are synonymous with "Dewars". "Dewar" is included in the Constitution (Scheduled Caste) Order, 1950. For such submission reliance is placed on Narayan Behera v. State of Orissa through Secretary, Trial (sic) and Welfare Department and others 49 (1980) CLT 47 in which it has been held-

"We have just indicated that according to Clause 2 of the Scheduled Caste Order, the castes, races 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 "Purnachandra Oriya Bhashakosh" 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.....

x x x x

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 "

and it is submitted that the petitioner who belongs to "Niari" community being by caste a "Keuta" comes within the ""Dewar" community which is one of the community of scheduled caste in Orissa prescribed by Presidential Order.

3 The learned counsel for the State, on the other hand, submits__

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

(b) The petitioner being a "Niari" which is not included in the Presidential Order no Caste certificate can be granted to him, therefore, no writ can be issued.

4. The maintainability of the writ application is raised before us. Admittedly, the petitioner did not avail the alternative remedy of appeal as provided under Rule 9 of the Rules. The writ application was admitted by this Court in the year 1990. Since the petitioner is seeking for declaration, in our opinion, the question should be decided here. Therefore, instead of sending the petitioner to appellate forum we are deciding the matter on merits.

5. The moot question for consideration is whether the petitioner who belongs to "Niari" community within the purview of scheduled caste list as declared in the Presidential Order. Rule 4 of the Rules prescribes mode of verification of castes. The relevant portion of Rule 4 is extracted below :

4. 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.

X X X"

6. In Purnachandra Oriya Bhashakosh the meaning of "Niari" is given as a caste of fisherman in Jajpur and Balasore.

7. The meaning of "Keuta" in Purnachandra Oriya Bhasakosh is a class of fishermen and boatmen. Their profession being catching fish, preparing flattened rice (Chuda) and rowing boats

8. Various documents have also been annexed to the writ application to prove that the petitioner belongs to a Scheduled Caste. Annexure-4 is a caste certificate which was issued to the father of the petitioner in the year 1986.

Annexure 11 is the copy of the extract from Orissa District Gazetteer relating to Keonjhar district which describes "Keutas" as follows :

"The Keutas or Kaibartas are found in large numbers in the district, settled mostly on the banks of the river Boitarani. Fishing, net making and plying of boats are their main profession. The females of the caste prepare fried rice and pressed rice which they sell generally in weekly markets....."

It is written in the Gazetteer that "Keutas" have been declared as Scheduled Caste since 5-11-1979.

Annexure-12, a letter for clarification from Deputy Serretary to Government, Letter No. 25943/HTW/Emp. (iv) 63/89 dt. 22nd Aug., 1989 to all Collectors wherein it has been stated :

"I am directed to invite a reference to this Deptt.'s Circular letter No. 17659 dated 20-7-1981 regarding inclusion of Dhibara, Keuta and Kaibarta community in the list of Scheduled Castes for the State of Orissa and to say that some complaints have been received that Scheduled Caste certificate is not being issued in favour of Keuta, kaibarta and Dhibara communities as a result of which they are not getting the benefits admissible for Scheduled Castes.

According to decision communicated in this Department's letter cited above, Keuta, Kaibarta and Dhibara communities traditionally engaged in fishing, boating etc. have to be treated as synonymous names of "DEWAR" community which has already been included in the Scheduled Caste list of Orissa. It has also been clarified in this Deptt. letter No. 27373 dt. 31-8-1988 addressed to Collector, Dhenkanal and copy communicated to all other Collectors in Memo No. 30655 dated 21-9-1988 that "Chudakuta", "Mudhi Bhaja" etc. are occupational activities of Keuta community but they are certainly not distinct caste groups. Accordingly if any person claims to belong to "Keuta" community, treated as synonymous of ""Dewar" community may be favoured with a Scheduled Caste certificate under the name of "Dewar" community.

It is, therefore, requested that this may be brought to the notice of all concerned for their guidance and necessary action."

X X X

Annexure-13 is a letter of clarification No. Emp. (iv) 22/88-2/373/ HTW., dated 31-8-1988 from the Special Officer-cum-Under Secretary to Govt. H. & T.W. Deptt. addressed to the Collector, Dhenkanal indicating guideline regarding issuance of Caste Certificates in favour of members of "Keutas" "Kaibartas" and Dhibaras". In the said clarificatory order the District Welfare Officer, Cuttack had indicated that "Chudakuta", "Mudhibhaja" are occupational activities, but not distinct caste groups. Persons belonging to "Keuta" community be treated as . synonymous of "Dewars" community and be issued with Scheduled Caste Certificates.

Annexure-15 is a copy of the letter No. 1469/THRTI dated 26-5- 1982 of Director, THRU. Bhubaneswar, addressed to the Deputy Secretary to Government, H. & T.W. Department, Bhubaneswar wherein it has been stated___

"Study of caste status of fishing 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 "fishing men". One of them is Kaibartas. In Orissa there is no distinction between Kaibarta and Keuta as found in some other status. The study reveals that Siuli-Kaibartas, Das Kaibarta, Niari-Kaibarta, 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-Kaibarta are also known as Radhi-Kaibarta. Fishing is their subsidiary occupation,.....

X X X

According to the judgment of the Orissa High Court, Keuta and Kaibarta and Dhibara communities have to be treated synonymous names of Dewar community which has already been specified in the Scheduled Caste list in relation to the State of Orissa. If Keutas or Kaibartas are eligible to get the benefit provided to the Scheduled Caste, the Niaris or Radhis who area section of the Keutas or Kaibartas should not be debarred from such type of privileges."

In the Orissa District Gazetteers prepared in the year 1977 by the Department of Revenue, it has been indicated (Annexure-16):

"The Keutas or Kaibartas are fishermen by caste They are divided into more than half a dozen endogamous groups, viz. Dhibara, Niari, Radhi, Machhua, Siuli, Kedar, Girigiria and Nauri. The Dhibaras ply boats and fish in the rivers. The Niaris, apart from fishing, prepare flattened rice. The Rerhis prepare flattened and puffed rice....."

A letter bearing No. 2212 dated 7-11-1990 (Annexure-17) from Under Secretary to Government to Commission-cum-Secretary of Harijan and Tribal Welfare Department has been brought to our notice, which is extracted below:

"I am directed to say that the committee on Welfare of Scheduled Castes and

Scheduled Tribes in their meeting held on 5-11-1990 have opined that the "Radhies" and "Niaries" should be included in the approved list of Scheduled Caste of State level Committee to enable them for all benefits as per provision of State Government.

I am therefore to request to kindly take necessary steps in this regard and action taken thereof be communicated this Secretariate at an early date for kind perusal of the committee "

9. A return has been filed by the State. In paragraph-3 of the counter affidavit it has been averred that:

".....It has been seen from the Record-of-Rights of the Tahasil that caste "Kaibarta" has been recorded against some individual tenants and Niari against some other individual tenants. So the Kaibarta and Niari are two completely different castes having different occupations. The caste Niari has not yet been included in the Orissa Scheduled Caste list. The clarification issued by the Government vide letter No. 25943/HTW dated 22-8-1989 from joint Director-cum-Deputy Secretary to Government, H. & T. W. Department Orissa, Bhubaneswar does not show that Niari is a sub- caste of caste Kaibarta as claimed by the petitioner. In forming a general opinion it is seen at this place that there are some persons belonging to different castes are also occupying the profession of "Chudakuta" and "Mudhibhaja" and also fishing with their own nets. But certainly they are not Kaibarta, Keuta or Dhibara. Therefore Niari cannot be treated as ""Dewar".

10. In Prafulla Kumar Pati Vs. Paramananda Sethi and Others and Smt. Nilamani Sethi and Others, the question that arose before their Lordships for consideration as to whether the Court has to refer only to the Presidential Notification issued under Art. 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 materials or 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.

The above question came up for consideration u/s 22 of the Orissa Land Reforms Act which contains a prohibition of sale of any land by a member of Scheduled Caste to a non-Scheduled Caste without permission of the authority prescribed under the Act. The transferee in the aforesaid case was of "Rajak" community not included in the list appended to the Constitution (Scheduled Caste) Order, 1950. It was contended before their Lordships that "Dhobas" are included in the list and "Rajak" community is synonymous to "Dhoba" and "Dhobi". This Court held that:

".....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 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 given an extended meaning to the list of communities and tribes notified by the Presidential Order."

The matter was carried to the Supreme Court and the judgment of the Supreme Court is reported in *The Revenue Officer and others Vs. Prafulla Kumar Pati and others*, . Their Lordships after considering the meaning of "Dhoba" as given in *Purnachandra Oryia Bhasakosh* which is a recognised authority and relying on the observations of the Supreme Court in *B. Basavalingappa Vs. D. Munichinnappa*, while observing the decision of this Court have held that :

".....even though the respondents Nos 2 and 5 i.e. the transferers mentioned in the deeds of transfer their caste as "Rajaka", there is no such caste mentioned in the ("Constitution) Scheduled Caste Order, 1950, In such circumstances, relying on the aforesaid observation of this Court, it is necessary and also incumbent on the Court to consider as to what caste the respondents Nos. 2 and 5 belong to Moreover, considering the record-of-rights as well as the various certificates issued by the revenue authorities and the local M L As. referred to hereinbefore wherein the transferors have been described as belonging to "Dhoba" community, the irresistible conclusion that follows is that the respondents-transferors belong to "Dhoba" caste which is one of the Scheduled Castes in the State of Orissa."

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 *Purnachandra Oryia Bhashakosh* and from all annexures as mentioned above, it is clear that though the "Niari" communities' occupational activities is "Chudakuta". "Mudhibhaja", but they are a caste of "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 In our opinion, the petitioner is entitled to be issued with a Scheduled Caste Certificate as he belongs to "Niari" community which is a sub-caste of "Keuta" which has already been declared as synonymous of "Dewar" by judgment pronounced in 49 (1980) CLT 47 (supra).

11. In the result, we allow the writ application and quash annexure-14 and direct opp. party No. 2 to issue a Scheduled Caste Certificate in favour of the petitioner.