

(2023) 03 OHC CK 0114
In the Orissa High Court
Case No : Writ Petition (C) No.18589 Of 2022

Sarthak Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

National Commission For Backward Classes Act, 1993 — Section 9(1), 9(2)

Citation : (2023) 03 OHC CK 0114

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Bhawani Sankar Panigrahi, B. Moharana, A.K. Sharma

Judgement

Arindam Sinha, J

1. Mr. Panigrahi, learned advocate appears on behalf of petitioner and submits, his client belongs to 'Byahut Kalwar' class. It is included in the backward class 'Kalwar'. National Commission for Backward Classes, Odisha Bench by advice dated 11th June, 1999 said that 'Kalwar' be included in the Central list of backward classes for Odisha, as a new entry at serial no.188. The advice included finding that inclusion of main caste 'Kalwar' will adequately cover all genuine sub-castes of 'Kalwar' and 'Byahut Kalwar' is a sub caste in 'Kalwar'. Hence, his client has prayed for direction upon the State for issuing, through appropriate department, necessary clarification/instruction clarifying that 'Byahut Kalwar' is a sub-caste of main caste 'Kalwar' appearing at entry no.188 of the Central list of Other Backward Classes (OBC) for Odisha.

2. Mr. Moharana, learned advocate, Central Government Counsel appears on behalf of Union of India. On query from Court he submits, counter has been filed.

3. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of State. He submits, State to has also filed counter.

4. It appears from paragraph-9 of the counter filed by Union of India that

petitioner need have no apprehension regarding him belonging to an other backward class. Union of India has stated clearly that petitioner can apply to concerned authority for issuing OBC caste certificate in his name, indicating his caste as 'Kalwar'. Paragraph 9 is reproduced below.

"9. That in view of the above advice given by the NCBC only the caste/community "KALWAR" is included in the Central List of OBCs for the State of Orissa. Thus it would be possible for the authorities to issue OBC certificates to the applicants indicating the caste as "KALWAR" and not "Byahut Kalwar". Since, the petitioner claims to belong to the community "Byahut Kalwar", which is a sub-caste of "Kalwar", he can apply to the concerned authorities for issuing of the OBC caste certificate in his name, indicating his caste as "KALWAR", along with all the supporting documents. In case all the supporting documents are submitted to the concerned State Government authorities, they will have to issue the OBC certificate to him indicating his caste as "KALWAR."

(emphasis supplied)

5. Mr. Sharma submits, State's contention is that the Ministry of Social Justice and Empowerment has not published any notification upto as on date, which includes 'Byahut Kalwar' in the Central list of OBC for the State of Odisha. Relevant passage in paragraph-7 of the counter is extracted and reproduced below.

"It is further humbly submitted that the Ministry of Social Justice and Empowerment has not published any Notification as on date, which includes "BYAHUT KALWAR" in the Central list of OBC for the State of Odisha."

Hence, stand has been taken in the counter that State Government has no role in the process of inclusion/exclusion of the caste/community in the central list of OBC for the State of Odisha.

6. Petitioner has not moved Court for inclusion of 'Byahut Kalwar' in the Central list. As aforesaid, he has asked for clarification that he belonging to sub-caste 'Byahut Kalwar' is included in main caste 'Kalwar', at serial no.188 in the Central list. In the advice given by the National Commission that was what was said. The advice paragraph is extracted and reproduced below.

IV. Advice of the Commission

20. The Commission considered and agreed in full with the findings of the Bench for Orissa and decided to tender the following advice to the Central Government under Section 9(1) of the NCBC Act, 1993 for action by the Central Government under Section 9(2) of the Act:-

Kalwar be included in the Central List of Backward Classes for Orissa as a new entry at Sl. No.188 as under:-

"188, Kalwar"

and the request for inclusion of 'Jaiswal', Byahut Kalwar and Byahut Bania as synonyms of Kalwar be rejected. As 'Jaiswal' is inly a title/Surname adopted by the members of Kalwar caste and many other castes/communities, its inclusion will give scope for misuse of the entry by some members of certain forward castes/communities for obtaining false caste certificates. Byahut Kalwar is a sub-caste of Kalwar and inclusion of the main caste 'Kalwar' will adequately cover all genuine sub-castes of Kalwar. Byahut Bania is not a sub-caste/synonym of Kalwar but a sub-caste of Baniya caste and socially not Backward."

(emphasis supplied)

7. In view of aforesaid, contention of State as appearing in the counter filed makes it necessary that there be clarification issued. Opposite party no.2 is directed to issue clarification by circular, clearly stating that sub-caste 'Byahut Kalwar' is included in main caste 'Kalwar' appearing at serial no.188 in the Central list of backward classes for Odisha. The circular is to be issued and notified within four weeks of communication.

8. The writ petition is disposed of.

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