
(1984) 08 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 275 of 1983

Sebaram Meher

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 25-08-1984

Acts Referred:

Citation : (1984) 58 CLT 562

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J.P. Misra and A.K. Misra, for the Appellant; Government Advocate and Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The Petitioner, a member of the "Kuli" community in the district of Sambalpur, applied to the Tahasildar, Attabira (opposite party No. 2) for a caste certificate stating that he belongs to one of the Scheduled Castes described in the Presidential order applicable to the State of Orissa. It is however, admitted that mention of Scheduled Caste in the, application was a mistake for Scheduled Tribe. The Tahasildar by a cryptic order rejected the application stating that the Petitioner belongs to "Kuli" caste which comes neither under the list of Scheduled Castes nor Scheduled Tribes notified under the Presidential Order (Annexure-1 to the writ application). This order of the opposite party No. 2 is under challenge in this writ application.

The State of Orissa through the Secretary, Tribal Welfare Department, Union of India through the Secretary, Ministry of Home Affairs and Commissioner for Scheduled Caste and Scheduled Tribe, New Delhi are the other opposite parties in the case.

2. The gist of the Petitioner's case is that the "Kuli" community in the State of Orissa is included "among the Scheduled Tribes in the notification as item No. 42 which reads as "Kulis". Indeed, there is no difference between the terms "Kuli"

and "Kulis" which are synonymous and refer to one and the same community. There is no separate community as "Kulis" in the State. According to the Petitioner, the opposite party No. 2 under an erroneous impression that "Kulis" under item No. 42 in the list of the Scheduled Tribes refers to a community different from "Kuli" to which the Petitioner admittedly belongs has rejected his application.

3. Two counter affidavits have been filed in the case, one on behalf of the State Government and the Tahasildar. Attabira and the other on behalf of Union of India. The opposite parties while justifying the impugned action of the Tahasildar contend inter alia that it is not permissible to add to the list of Scheduled Castes and Scheduled Tribes enumerated in the relevant Presidential Order applicable to the State. They further contend that "Kuli" community does not find place in the list of Scheduled Castes as amended up-to-date. So far as the list of the Scheduled Tribes is concerned their case is that item No. 42 refers to the community "Kulis" and not "Kuli" and hence the opposite party No. 2 was justified in taking the view that the Petitioner is not entitled to a caste certificate.

4. Before considering the impugned order passed by the opposite party No. 2, it will be helpful to refer to some relevant facts which are not in controversy. According to the Scheduled Castes and Scheduled Tribes List (Modification) Order, 1956 "Kuli" was specified as a Scheduled Caste in Sambalpur district. By the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 "Kuli" was deleted from the list. In the list of Scheduled Tribes "Kulis" was already mentioned against item No. 42. It is worth noting here that in the list of Scheduled Tribes printed in Oriya language, item No. 42 reads as "Kuli", whereas the list printed in English language the same item is described as "Kulis".

5. It is well settled that the list of Scheduled Castes and Scheduled Tribes given in Presidential Order is not available to be changed or substituted. But it is open to the Court to consider whether a particular community is included in the list. The question for consideration is whether "Kuli" community stands included in the list of the Scheduled Tribes in the State of Orissa according to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 or in other words, whether "Kuli" and "Kulis" are synonymous terms. Though the opposite parties have taken the stand that the two terms refer to different communities, no material is produced before us to show that there exists in the State a separate community of "Kulis". In fact, the report of the Commissioner for Scheduled Castes and Scheduled Tribes for the years 1975-76 and 1976-77, the relevant portion of which is quoted in paragraph-10 of the writ application, reads as follows:

...In case of Orissa, the "Kuli" community which was earlier declared as Scheduled Caste in Sambalpur District has already been deleted from the list as "Kulis" are already declared as Scheduled Tribe throughout the State....

This statement in the report has not been shown to be erroneous. It lends

support to the contention of the Petitioner that the "Kuli" community which was included in the list of Scheduled Castes for the District of Sambalpur is included in "Kulis" described tender item No. 42 of the list of the Scheduled Tribes for the entire State. Though in the counter affidavit filed on behalf of Union of India, a statement was made that the deletion of "Kuli" community from the list of the Scheduled Castes was on the ground that the members of the community do not fulfil the criteria for inclusion of any community in the list of Scheduled Castes which also extreme social, educational and economic back wardness arising out of the traditional practice of untouchability, the same has not been substantiated with any material.

6. The position that emerges from the aforesaid discussion is that the "Kuli" community in the State of Orissa is included in the list of Scheduled Tribes given under item No. 42, "Kuli" in the Presidential Order. From the Impugned order it is apparent that the Tahasildar has not applied his mind to the case while rejecting the Petitioner's application by cryptic order.

7. We would accordingly, direct the Tahasildar, Attabira (opposite party No. 2) to dispose of the matter in the light of the observation made above, after such enquiry as he deems necessary. He will give an opportunity to the Petitioner to adduce evidence if he so likes. The enquiry shall be concluded and final orders should be passed within two months hence.

The writ application is allowed, the impugned order under Annexure-1 is set, aside and the matter is remitted to the opposite party No. 2 for fresh disposal in the terms aforesaid. There will be no order as to costs.

R.C. Patnaik, J.

8. I agree.