
(2002) 05 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 439 of 2001

Sumit Anand through his father Dr. Sunil Kumar	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Citation : (2002) 2 BLJR 1430 : (2002) 3 PLJR 393

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—On 25.2.1999 the State of Bihar issued a Circular that "Gond", "Gour" and "Gonr" be treated as "Bond" and each of them would be entitled to the benefits and facilities available to the members of the Scheduled Tribes. On 25.9.1991 the State Government vide its Letter No. 124 made a request to the Home Ministry, Government of India to approve the said Circular dated 25.9.1991. The Government of India vide its Letter No. 12016/70/81 SCD (R Cell) dated 25.2.1992 informed the State of Bihar that its Circular No. 11/V-26/89-Ka-25 dated 25.2.1991 was unconstitutional. The Government of India made a request to the State of Bihar to withdraw its Circular dated 25.2.1991. Sri Ram Chandra Singh and others feeling aggrieved by the said Circular dated 25.2.1991 filed a writ application being C.W.J.C. No. 8466/91 in this High Court. Vide the judgment dated 15.7.1993 the High Court quashed the Circular dated 25.2.1991. From the records it does not appear that the judgment of the High Court delivered in C.W.J.C. No. 8466/91 was challenged or nor by the State of Bihar. From the records it appears that on 14.7.1995 vide Letter No. 80 the State of Bihar yet made another request to the Government of India for reconsideration of the entire matter. A reminder Letter No. 134 dated 4.9.1996 was also sent.

2. From the records it appears that Susri Kanta Tirky filed a public interest litigation against the State of Bihar. The said matter was registered as C.W.J.C.

No. 8185/96. The said petition was decided on 25.9.1996 and the High Court of Patna directed the State Government to observe the judgment delivered in C.W.J.C. No. 8466/91 Sri Ram Chandra Singh and Ors. v. State of Bihar and Ors. in its letter and spirit. The State Government still desirous of enforcing its Circular dated 25.2.1991 required the Government of India by its Letter No. 182 dated 26.11.1996, to inform as to what was done at the level of the Government of India with regard to the earlier request made by the State of Bihar. On 4.3.1997 taking into consideration the pros and cons and feeling bound by the judgment of the High Court, the State issued yet another Circular No. 12/96/Ka-35 informing all concerned that the Circular dated 25.2.1991 stands revoked. It also informed all concerned that only "Gond" would be treated as Scheduled Tribes.

3. The dispute in the present matter in nutshell is that whether the petitioner is entitled to a certificate from the District Magistrate that he belongs to Scheduled Tribe on the State Government through the District Magistrate is entitled to make an enquiry into the eligibility of the petitioner. The State Government has raised a plea in these proceedings that "Gond", "Gour" and "Gonr" were treated as "Gond" prior to 1991 and therefore, in discreet certificates were issued in favour of the persons belonging to all the communities and in view of the Circular dated 25.2.1991 persons belonging to "Gour" community and "Gonr" community were also treated as "Gond". The State Government says that in cases of present nature the State Government and/or the District Magistrate would be within its jurisdiction to make an enquiry, looking into the eligibility of the claimant and only thereafter, issue or refuse to issue a certificate.

4. The petitioner being aggrieved by the stand of the State Government has come to this Court in these proceedings, inter alia, making a submission that looking to the nature of the dispute and the host of the evidence, and enquiry is not required to be made and as the petitioner is an off spring of two Gonds, no enquiry is required to be made. The petitioner says that for the reasons best known to the authorities he is being denied the certificate and this inaction and non-action on the part of the State and its officers is adversely affecting him, his future and career. The petitioner says that the documents annexed with the writ application would convincingly show that the petitioner is a "Gond" by birth and the effect of the said documents would clinch the issue. Number of the documents have been annexed with this writ application which shall be discussed and their effect shall be considered at appropriate stage.

5. The State Government before this Court is sticking to its earlier stand by making a submission that the petitioner does not belong to "Gond" tribe. The certificates issued in favour of the parents, of the petitioner or other relations would be of no consequence because the certificates were issued at the time when the law was not settled. It is also said by the State Government that neither the parents of the petitioner nor the other relations of the petitioner belonged or belong to the "Gond" tribe and as such the petitioner is also not a "Gond". They

have submitted that if the petitioner is a "Gond" since birth then he must prove the fact and on being satisfied into the tribal originality of the petitioner, the State Government and its officers would issue the requisite certificate.

6. Dr. S.N. Jha, learned Senior Counsel after taking me through the documents annexed with the writ application and the additional affidavit submitted that the documents would clearly show that the petitioner is an off spring of tribals, his parents and other relations were tribals and as each of them are "Gond", the petitioner could not be refused the requisite certificate. Sri S.K, Ghosh, learned Additional Advocate General-II after taking me through the plea raised in the counter reply and the documents annexed with it submitted that the certificate issued in favour of the parents and other relations of the petitioner are of no consequence and no importance can be attached to the said certificates because the said certificates were issued at the time when a distinction was not made by the State Government and its officers between "Gond", "Gour" and "Gonr". He submits that the petitioner be required to prove his case by leading positive evidence before the concerned officer and if he satisfies the judicial conscience of the said officer, the State would have no objection in issuing the certificate.

7.1 have heard learned Counsel for the parties at length and have perused the complete records.

8. It would be noteworthy that each of the parties are relying upon the sale-deed dated 10.8.1907 and 13-2-1941. The said sale-deeds have been executed by Raghunandan Ram, great grand father of the petitioner. Sri Jha placing reliance upon the endorsement made by the Registering Officer on 13.2.1941, which can be seen on the back of the first page of the said sale-deed, says that petitioner's grand father was described as "Gond", therefore, he is a "Gond". Similar reliance has been placed by him on the endorsement made by the Registering Officer on the back of the sale-deed dated 10.8.1907. Placing reliance upon these two documents it is contended that the great grand father of the petitioner was a "Gond" and was so long years back when the reservation laws were not in vogue, nor were anticipated. Sri Ghosh, learned Additional Advocate General submits that from the opening line of these documents " it would clearly appear that Raghunandan Ram, great grand father of the petitioner described himself as "Gaur", therefore, this Court must hold that the petitioners great grand father was not a "Gond" but was a "Gour". He submits that any endorsement made by the Registering Officer would not show the petitioner's great grand father was a "Gond" but the description made in the body of the sale-deeds and the recitals would prove the issue. At this stage I am only to say that the documents are written by the Deed Writers and the endorsements are made by the Registering Officer after making personal enquiry from the executant of the document. Deed Writing may or may not be wise enough to understand the distinction between "Gond" and "Gour" but the same would not apply to the Registering Officer who is supposed to be an educated person. When the Registering Officer makes the personal enquiries to satisfy himself about the execution of the documents,

contents of the documents, the identity of the person and his case etc. then he discharges his official duties. It is not expected of him that he shall make casual enquiries, or make casual endorsements while registering the documents. The documents executed on 10.8.1907 and 13.2.1941 would certainly support the case of the present petitioner. The petitioner further relies upon the report of the Circle Officer and the letter of the District Magistrate which are part of Annexure-6. The Circle Officer made a positive statement in favour of the petitioner's family that they are "Gond". The District Magistrate after applying his independent mind and taking into consideration the totality of the circumstances made the recommendation that the family was "Gond". The contents of these two documents have simply been explained by the State Government saying that these letters would assume no importance because the letters are not based on proper material. After going through the arguments and the contents of the letter I am unable to hold that these enquiry reports and letters show non-application of the mind/or were connected or manufactured to support the case and cause of the petitioner or his family.

9. Anjani Kumar, maternal uncle (petitioner's mother's brother) was not issued the required certificate, therefore, he had come to this Court in C.W.J.C. No. 1407/ 1990 Anjani Kumar v. State of Bihar and Ors. The petition was decided on 24.10.1990 and a Division Bench of this Court allowed the petition with a direction to the respondent-District Magistrate to grant caste certificate to the said petitioner showing him to be a member of scheduled tribe belonging to "Gond" community. The High Court in the said judgment (Annexure-5) took into consideration the effect of a certificate issued in favour of father of Anjani Kumar (maternal) grand father of the present petitioner). The High Court also observed that on the strength of the said certificate Anjani Kumar's father was appointed as Upper Division Clerk in the Income Tax Department somewhere in the year 1965 and he retired as Inspector of Income Tax. The High Court placed its strong reliance upon the certificate issued in favour of Anjani Kumar's father because the State was not ready to say that the said certificate was fraudulent. The High Court was also of the view that father and grand father of a particular person if are found to be of a particular community, the irresistible conclusion would be that the claimant would be a member of the said community i.e., "Gond". The High Court placed its reliance on earlier judgments delivered in C.W.J.C. No. 7826/89 decided on 30.4.1990 and C.W.J.C. No. 8321/88 decided on 23.5.1989. From these judgments it would clearly appear that the petitioner's maternal uncle, maternal grand father and maternal great father belonged to "Gond" community. The irresistible conclusion would be that the petitioner's mother also belonged to "Gond" community. In view of the judgment of the High Court in C.W.J.C. No. 1407/90, on 11.3.1999 the District Magistrate Bhojpur at Ara issued a certificate in favour of Anita Kumar, daughter of Sheo Muni Prasad and mother of the petitioner that she belongs to "Gond" community and is a scheduled tribe.

10. From the above discussion it would clearly appear that the maternal side of the present petitioner is "Gond". In support of his case, the petitioner has placed

strong reliance upon the certificate No. 169 dated 23.12.1982 issued by the District Magistrate, Siwan in favour of Sunil Kumar, son of Suraj Narain Prasad (father of the petitioner). The petitioner is also placing strong reliance upon Certificate No. 203 dated 14.1.1983 (Annexure-9) issued by the District Magistrate, Siwan in favour of Suraj Narain Prasad, s/o Raghunandan Ram.

11. From these two certificates, the correctness of which has not been challenged before me, barring a statement that these were casually issued, it would clearly appear that the father and grand father of the present petitioner belonged to "Gond" community, a scheduled tribe. To say that the State and its Officers were raising false pleadings that the petitioner's family was engaged in frying corns and Bhoonja, the petitioner has filed the judgment of this Court delivered in C.W.J.C. No. 7370/96 Sunil Kumar (present petitioner) v. State of Bihar and Ors.

12. From Annexure-11 dated 11.9.1981 a caste certificate issued by the Sub-Divisional Magistrate, Sadar Range it would clearly appear that Suraj Narain Prasad (grand father of the petitioner) belongs to "Gond" community, a scheduled tribe. From Annexure-12, a certificate, dated 21.9.1951 issued by District Magistrate, Shahabad it would clearly appear that petitioner's maternal grand father, Sheo Muni Prasad was given the caste certificate showing him to be "Gond", a scheduled tribe. The Service Book of Sheo Muni Prasad, has also been annexed with Annexure-12 to show that said Sheo Muni Prasad belonged to "Gond" community.

13. Though ordinarily the High Court does not enter into a fact finding enquiry but when the facts are clear and straight the High Court cannot say that it would not look into the facts and would refuse to record a finding. From the sale-deeds of 1907 and 1941 it would appear that petitioner's great grand father belonged to "Gond" community, a scheduled tribe. Suraj Narain Prasad, paternal grand father could secure services because he belonged to "Gond" community and was treated as such all through. The petitioner's father holds a valid certificate that he belongs to "Gond" community. On face of these documents I find no difficulty in holding that the petitioner's ancestors/predecessors belonged to "Gond" community. Petitioner's maternal grand father also secured services as he belonged to "Gond" community and from the documents it would clearly appear that he was a "Gond". Petitioner's maternal uncle Anjani Kumar was found a person belonging to "Gond" community by the High Court in C.W.J.C. No. 1407/99. Petitioner's mother was issued a certificate by the concerned competent District Magistrate in view of the judgment delivered in C.W.J.C. No. 1407/99. On strength of this evidence I find no difficulty in holding that the petitioner's paternal and maternal side do belong to "Gond" community, a scheduled tribe. I should not find any difficulty in recording a finding that any offspring of two Gond tribals would be a "Gond". I would only take support from the Division Bench of this Court in the matter of Anjani Kumar v. State of Bihar, (C.W.J.C. No. 1407/90) decided on 24.10.1990 wherein their Lordships of this

Court have observed that if the parents of a particular person belong to a particular community/Scheduled Tribe, the irresistible conclusion would be that the said claimant belongs to the said community.

14. The submission of Shri Ghosh that the State wants to make an enquiry into the truthfulness of the petitioner's statement cannot be allowed to detain this Court unnecessarily. Can the State Government make an enquiry into the certificates issued in favour of the petitioner's parents and other relations under the pretext that they are making enquiry into the petitioner's claim? The State Government in its wisdom all through has been relying upon the certificates which have been issued by competent officer in favour of the petitioner's parents and other relations. If the said certificates stand, then there is no occasion for the State Government to make an enquiry into the certificates issued in their favour under the garb of enquiry proposed to be made into the entitlement of the petitioner.

15. In view of the discussions aforesaid I am of the view that the overwhelming evidence in favour of the petitioner proves that he belongs to "Gond" community, a Scheduled Tribe. There is no need of an enquiry either by the State Government or the District Magistrate. The writ petition is accordingly allowed and the respondents are directed to issue a caste certificate to the petitioner showing the petitioner as a member of Scheduled Tribe belonging to "Gond" community within one month from the date of receipt/production of a copy of this order.

16. The petition is allowed but, however, there shall be no order as to costs.