

B. Basavalingappa

Vs

D. Munichinnappa

Civil Appeal No. 401 of 1964

(K. N. Wanchoo, M. Hidayatullah, Raghubar Dayal JJ)

23.09.1964

JUDGMENT

WANCHOO J.

This is an appeal by special leave against the judgment of the Mysore High Court in an election matter. An election was held to the Bangalore South (Scheduled Castes) constituency in February 1962. Four persons stood for election including the appellant and Munichinnappa respondent No. 1, who obtained the highest number of votes and was declared elected. The appellant then filed an election petition challenging the election of respondent No. 1 on a number of grounds. In the present appeal we are concerned only with one ground, namely, that respondent No. 1 was not a member of any of the scheduled castes mentioned in the Constitution (Scheduled Castes) Order, 1950 (hereinafter referred to as the Order.) Respondent No. 1 claimed that he belonged to the scheduled caste listed as Bhovi in the Order. The appellant on the other hand contended that respondent No. 1 was a Voddar by caste and that Voddar was not a scheduled caste specified in the Order and consequently respondent No. 1 could not stand for election from a scheduled caste constituency. The Election Tribunal held that the caste mentioned as Bhovi in the Order was a sub-caste amongst the Voddars and that only this sub-caste was included in the Order and not the entire Voddar caste. The Tribunal also held that respondent No. 1 did not belong to the sub-caste of Bhovi and therefore was not eligible for standing as a candidate from the scheduled caste constituency. Consequently the election was set aside and re-election ordered by the Tribunal.

Respondent No. 1 went in appeal to the High Court and his contention was that he belonged to the scheduled caste Bhovi mentioned in the Order and was therefore entitled to stand for election from the scheduled caste constituency. The High Court held that Voddar caste as such was not included in the Order, but considering the facts and circumstances in existence at the time when the Order was passed in 1950, the Bhovi caste mentioned therein was no other than Voddar caste. It therefore allowed the appeal holding that respondent No. 1 being a Voddar must be held to be a member of the Bhovi caste mentioned in the Order and dismissed the election petition. The High Court having refused leave to appeal, the appellant got special leave from this Court, and that is how the matter has come up before us.

The main contention on behalf of the appellant is that a person is only entitled to stand for election from a scheduled caste constituency if he is a member of a caste specified in the Order and that it is not open to any one to claim that though he is not a member of a caste specified in the Order and is a member of some other caste, that other caste is included in the caste specified in the Order. It is submitted that wherever a caste has more than one name, the Order specifies the other name in brackets and that even where a particular caste is spelt in more than one way, the Order has included

in the same entry the various spellings of the same caste. Therefore, as the caste Bhovi specified in the Order does not mention the caste Voddar in brackets thereafter, it was not open to the Tribunal to take evidence to the effect that Voddar caste is no other than the Bhovi caste. It is therefore urged that the High Court was wrong in looking into the evidence that was produced before the Tribunal and then coming to the conclusion that the caste Bhovi mentioned in the Order was meant for the caste Voddar and that such evidence had not been allowed the respondent who is a Voddar by caste could not stand for election for the Voddar caste is not mentioned in the Order at all.

Article 341 of the Constitution which deals with Scheduled Castes is as follows :-

"(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races, or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) 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."

Clause (1) provides that the President may with respect to any State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular caste is Scheduled Caste or not and only those castes can be Scheduled Castes which are notified in the Order made by the President under Art. 341 after consultation with the Governor where it relates to such castes in a State. Clause (2) then provides that parliament may by law include in or exclude from the list of scheduled castes specified in a notification issued under cl. (1) any caste, race or tribe or part of or group within any caste, race or tribe. The power was thus given to Parliament to modify the notification made by the President under cl. (1). further cl. (2) goes on to provide that a notification issued under cl. (1) shall not be varied by any subsequent notification, thus making the notification by the President final for all times except for modification by law as provided by cl. (2). Clearly therefore Art. 341 provides for a notification and for its finality except when altered by Parliament by law. The argument on behalf of the appellant is based on the provisions of Art. 341 and it is urged that a notification once made is final and cannot even be revised by the President and can only be modified by inclusion or exclusion by law by Parliament. Therefore in view of this stringent provision of the Constitution with respect to a notification issued under cl. (1) it is not open to any one to include any caste as coming within the notification on the basis of evidence - oral or documentary, - if the caste in question does not find specific mention in the terms of the notification. It is therefore urged that the Tribunal was wrong in allowing evidence to show that Voddar caste was the same as the Bhovi caste mentioned in the Order and that the High court was in error when it held on the basis of such evidence that Voddar caste was the same as the Bhovi caste specified in the Order and therefore respondent No. 1 was entitled to stand for election because he belonged to

Voddar caste which was the same as the Bhovi cast.

It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order [see Aray (Mala) Dakkal (Dokkalwar) etc.]. Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste is not mentioned in brackets after the Bhovi caste in the Order.

But that in our opinion does not conclude the matter in the peculiar circumstances of the present case. The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all. The Order refers to a Scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be accepted that there was some caste which the president intended to include after consultation with the Rajpramukh in the order. When the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the president included the caste Bhovi in the order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to courts to find out which cast was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this Peculiar circumstance therefore which necessitated the taking of evidence to determine which was the caste which meant by the word 'Bhovi' used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956.

Let us then turn to the evidence which has been given in this case to prove that it was Voddar caste which was meant by the word Bhovi included in the Order. In this connection reliance has been placed on a communication made to the then government of Mysore as far back as 1944 on behalf of Voddar caste and the Order of then government of Mysore in February 1946. It seems that a resolution was passed by the Voddar caste at conference in July 1944 in which it was resolved that the name of that caste be changed from Voddar to Bhovi. This resolution was processed in the Secretariat. Eventually an order was passed on February 2, 1946 in these terms :

"Government are pleased to direct that the community known as 'Vodda' be in future called 'Boyi' in all Government communications and records."

Since then it seems that in all government records the Voddar caste has been known as Boyi, for it is not disputed that Voddar and Vodda are the same. It seems therefore reasonable to infer when the President made the Order in 1950 after consultation with the Rajpramukh of Mysore whom he was bound to consult under the Constitution before passing the Order with respect to the State of Mysore that the caste Vodda was included in the Order as Bhovi because of the Order of the then government of Mysore of February 1946. We shall deal with the difference in spelling later but it does appear that the caste Voddar was not mentioned as such in the Order because the name of that

caste was changed in 1946 for all government purposes by the Order of the then government of Mysore. Therefore if the Order had mentioned the caste as 'Boyi' there would have been no difficulty in holding that it meant the Voddar caste in view of the Order of the then Mysore Government of February 1946 to the effect that the Voddars had given up their original name and had changed it to Boyis from 1946.

It is however urged that the Order does not mention the caste Boyi but the caste Bhovi and that wherever there is a difference in spelling of the same caste, the Order has provided for that also; (see for example, Bhambi, Bhambhi; Shenva, Chenva; etc.). Therefore when the Order provided the inclusion of the caste Bhovi therein it could not refer to Voddar caste, for the change of name that was sanctioned by the then government of Mysore in 1946 was from Voddar to Boyi. Here again there is force in the contention that where the same caste was spelt differently, the different spellings have been provided in the Order as illustrated already. But the same difficulty which faced us in considering the question whether Voddar caste was meant by the caste Bhovi included in the Order arises, when we consider the difference in spellings, for it is not in dispute that there was no caste known as Bhovi in the Mysore State as it existed in 1950 when the Order was passed. 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 1946, the Voddar caste has been variously spelt as Bovi, Bovi, and Bhovi in English, though the Kanada equivalent is one and the same. The High Court therefore has not attached any importance to the change in the English spelling in the peculiar circumstances of this case. In this connection attention may be drawn to the notification of the then government of Mysore dated February 2, 1946 where Voddar caste is spelt in three ways in the same notification; at one place it is spelt as Voddara, at another place as Voddar and at two places as Vodda. It seems therefore that we cannot attach undue importance to the spelling in English in this case when we know that there was no specific caste known as Bhovi in Mysore State as it was before 1956 and we have to determine which was the caste which was meant by the use of that term in the Order. In this connection we may also draw attention to another copy of the same notification which was issued by another department of the Government. In that copy Voddara has been spelt as Voddara and Boyis as Bovis. It seems to us therefore that the High Court was right in the peculiar circumstances of the present case in not attaching any importance to difference in spelling in English, and to treat Bhovis as the same as Boyis. We do not think it necessary to refer to the various census reports, which have been referred to by the Tribunal and the High Court for they only show how the same caste has been differently spelt. In the circumstances therefore we agree with the High Court that respondent No. 1 though Voddar by caste belongs to the scheduled caste of Bhovi mentioned in the Order. We may again repeat that we have referred to the evidence in this case only because there was undoubtedly no caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out therefore which caste was meant by the word Bhovi as used in the Order. But for this fact it would not have been open to any party to give evidence to the effect that (for example) caste A mentioned in the Order includes or was the same as caste B where caste A does exist in the area to which the Order applies.

In this view of the matter, the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

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