Bhaiyalal

Vs

Harikishan Singh and Others

Civil Appeal No. 765 of 1964

(CJI P. B. Gajendragadkar, M. Hidyatullah, J. C. Shah, S. M. Sikri, K. N. Wanchoo JJ)

05.02.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

This appeal by special leave arises out of an Election petition filed by respondent No. 1, Harikishan Singh, challenging the validity of the election of the appellant, Bhaiyalal, in a reserved seat in the Berasia Constituency in the direct of Sehore in Madhya Pradesh. The election in question was held in February, 1962; at this election the appellant, respondent No. 1, and three others offered themselves as candidates. The appellant was declared duly elected on the February 26, 1962 since he had polled the highest number of votes. His next rival was respondent No. 1. By this petition, respondent No. 1 challenged the validity of the appellants election on the ground that the appellant belonged to the Dohar caste and was not a Chamar. The appellant had filed his nomination paper on the January 19, 1962 before the Returning Officer at Sehore and had declared that he was a member of the Chamar scheduled caste of the State of Madhya Pradesh in relation to Sehore district. This declaration was accepted by the Returning Officer. Respondent No. 1 contended that Dohar caste was not recognised as the scheduled caste for the district of Sehore and Raisen, and so, the Returning Officer had improperly and illegally accepted the declaration of the appellant as one belonging to the Chamar scheduled caste. Since the appellant did not belong to the scheduled caste in question, he was not entitled to stand for election for the reserved seat in respect of the said Constituency. This is the basis on which the validity of the appellant's election was challenged by respondent No. 1. On the other hand, the appellant urged that the election petition filed by respondent No. 1 was not maintainable inasmuch as he had not deposited the security of Rs. 2,000 in the manner prescribed by the statutory rules.

On these pleadings, the Election Tribunal framed appropriate issues. The first four issues covered the principal contention raised by respondent No. 1 against the validity of the appellant's nomination as a member belonging to the Chamar scheduled caste, whereas the fifth issue related to the appellant's contention about the incompetence of the election petition filed by respondent No. 1. Both parties led evidence in support of their pleas on the principal point of dispute between them. The Election Tribunal considered the oral evidence adduced by the parties, examined the documents on which they respectively relied, and found in favour of respondent No. 1. In regard to the plea raised by the appellant against the competence of the election petition, the Tribunal found against him. In the result, the election petition was allowed and the appellant's election declared invalid.

Against this decision of the Election Tribunal, the appellant preferred an appeal to the Madhya Pradesh High Court. Before the High Court, the same two points were urged. The High Court has confirmed the finding of the Election Tribunal on both the points. It has held that the election

petition filed by respondent No. 1 was valid and the security deposit was made by him in accordance with the statutory requirements. On the merits of the controversy as to whether the appellant was a Chamar by caste and as such was entitled to be elected for the reserved seat in the Constituency in question, the High Court, in substance, has agreed with the conclusion of the Election Tribunal. In consequence, the appeal preferred by the appellant was dismissed on the April 23, 1963. It is against this decision that the appellant has come to this Court by special leave.

On behalf of the appellant Mr. Chatterjee has contended that the High Court was in error in confirming the finding of the Election Tribunal in regard to the caste to which the appellant belonged. It appears that the appellant's care was that he was a Dohar Chamar which according to him is a sub-caste of the Chamar scheduled caste. He urged that the said sub-caste was also called 'Mochi'. In support of this plea, the appellant examined witnesses and produced documents, and as we have just indicated, respondent No. 1 also produced witnesses and examined documents to show that the Dohar caste was distinct from and independent of the Chamar caste and Dohars could not, therefore, claim to be Chamars within the meaning of the Presidential Order. Thus, the question which arose between the parties for decision in the present proceedings is a question of fact and on this question both the Tribunal and the High Court have made concurrent findings against the appellant. It is true that in reaching their conclusion on this point, the Tribunal as well as the High Court had to consider oral as well as documentary evidence; but in cases of this kind where the Tribunal and the High Court make concurrent findings on questions of fact, this Court does not usually interfere; and after hearing Mr. Chatterjee we see no reason to depart from our usual practice in this matter.

Respondent No. 1 examined 13 witnesses belonging to the caste of the appellant. All of them asserted that they did not belong to the Chamar caste. According to their evidence, the Dohar caste was different from the Chamar caste. There was no intercaste marriage nor even inter-caste dinners between the members of the said two castes. This evidence shows that Chamars and Mochis of Sehore district lived in mohallas different from the mohallas in which the Dohars lived. Amongst the witnesses examined by respondent No. 1, the High Court has attached considerable significance to the evidence of Kishanlal, P.W. 4. He was the Secretary of the Dohar Samaj started by the appellant himself. The appellant was then the Sirpanch of that Samaj. It is true that the Samaj did not function for long; but the documents produced by respondent No. 1 to show the constitution of the Samaj clearly indicate that the appellant had taken a prominent part in that matter. Kishanlal's evidence is absolutely clear and unambiguous. He has stated on oath that the Dohar and the Chamar castes are entirely different. The Chamars, according to him, take off skins from dead animals, prepare shoes and do leather work; the Dohar, said the witness, is not the sub-caste of Chamar caste; there is no relationship of inter-dining and intermarriage between the two. He denied that the Dohars are called Mochis. Mr. Chatterjee has not been able to show any reason why the evidence of the witness should not have been believed by the High Court. The witness belongs to the same caste as the appellant and there is no motive shown why he should take a false oath in respect of a matter which to persons of his status has great significance. It is not likely that a person like Kishanlal would make false statement about his own caste.

In support of his oral evidence, respondent No. 1 produced certain documents, Exts. P. 2, P. 3, P. 4 and P. 5. These are all signed by the appellant and they relate to the year 1956. In these documents, the appellant has described himself as Dohar; in none of them has he mentioned his caste as Chamar. Similar is the effect of other documents on which respondent No. 1 relied; they are P. 8, P. 10, P. 11, P. 6, P. 7, P. 9, P. 14, P. 15, P. 17, P. 19, to P. 27.

In rebuttal the appellant examined himself and his witnesses. This oral evidence was intended to show that the Dohar caste is the same as Mochi caste and it is a sub-caste of the Chamar caste. In addition to the oral evidence, the appellant produced 22 documents. It is true that some of these documents which had been discarded by the Election Tribunal as unworthy of credence or as irrelevant, have been accepted by the High Court as relevant and genuine. Even so, the High Court has come to the conclusion that these documents do not show satisfactorily that the Dohar caste is a sub-caste of the Chamar caste. In that connection, the High Court has pointed out that the documents relief upon by the appellant do not support his case that the Dohar caste is a sub-caste of the Chamar caste, and in that sense, they are not consistent with the plea made by the appellant in the present proceedings. We allowed Mr. Chatterjee to take us through the material evidence; and on considering the said evidence in the light of the criticism made by Mr. Chatterjee, we are satisfied that there is no reason to interfere with the concurrent finding recorded by the Tribunal and the High Court on the main question of fact. We must, accordingly, hold that the appellant does not belong to the Chamar caste and as such was not qualified to context the reserved seat for the scheduled caste of Chamars in the Constituency in question.

Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Article 341 of the Constitution. Article 341(1) provides that 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. Sub-Article (2) lays down that 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. It is thus clear that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art, 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Art. 341. In the case of B. Basavalingappa v. D. Munichinnappa & Others, ([1965] 1 S.C.R. 316.) this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent No. 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be : "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." That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted.

While we are referring to this aspect of the matter, we may point out that the Order has taken good care to specify different castes under the same heading where enquiry showed that the same caste

bore different names, or it had sub-castes which were entitled to be treated as scheduled castes for the purposes of the Order. In the district of Datia, for instance, entry 3 refers to Chamar, Ahirwar, Chamar Mangan, Mochi or Raidas. Similarly, in respect of Maharashtra, Item 1, entries 3 and 4 refer to the same castes by different names which shows either that the said castes are known differently or consist of different sub-castes. Likewise, item 2, entry 4 in the said list refers to Chamar, Chamari, Mochi, Nona, Rohidas, Ramnami, Satnami, Surjyabanshi or Surjyaramnami. It is also remarkable that in Maharashtra in certain districts Chambhar and Dhor are included in the list separately. Therefore, we do not think that Mr. Chatterjee can seriously quarrel with the conclusion of the High Court that the appellant has not shown that he belongs to the Chamar caste which has been shown in the Order as a scheduled caste in respect of the Constituency in question.

Mr. Chatterjee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the States. His argument was that what the President can do under Art. 341(1) is to specify the castes, races or tribes or parts thereof, but that must be done in relation to the entire State or the Union territory, as the case may be. In other words, says Mr. Chatterjee, the President cannot divide the State into different districts or sub-areas and specify the castes, races or tribes for the purpose of Art. 341(1). In our opinion, there is no substance in this argument. The object of Art. 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within then should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and education are backwardness of the race, caste or tribe justifies such specification. In fact, it is well-known that before a notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness is regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may very in degree or in kind in different areas and that my justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. Therefore, Mr. Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Art. 341(1).

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

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