Abhoy Pada Saha

Vs

Sudhir Kumar Mondal

Civil Appeal Nos. 931 and 1149 of 1965

(Raghuvar Dayal, J. R. Mudholkar, R. S. Bachawat JJ)

05.05.1966

JUDGMENT

SARKAR, C.J.-

These appeals arise out of an election to a seat in the West Bengal Legislative Assembly from the Khargram Murshidabad constitutency reserved for members of the Scheduled Castes. The contestants at this election were Abhoy Pada Saha and Sudhir Kumar Mondal. Sudhir is admittedly a member of a Scheduled Caste. Abhoy Pada described himself in the nomination paper as "a member of the Sunri caste which is a Scheduled Caste". Sudhir objected to this nomination contending that Abhoy Pada did not belong to any Scheduled Caste. The objection was rejected by the Returning Officer. At the election which ensued, Abhoy Pada secured 16,730 votes and Sudhir, 15,523 and the former was consequently declared elected.

Sudhir then filed a petition challenging the validity of Abhoy Pada's election on various grounds. At the hearing of the petition by the Election Tribunal, however, he challenged the election only on the ground that Abhoy Pada was a member of the Saha caste and not a member of a Scheduled Caste. The Election Tribunal rejected this contention and dismissed the petition. Sudhir then appealed to the High Court at Calcutta which reversed the decision of the Tribunal and declared the election of Abhoy Pada invalid and set it aside on the ground that he did not belong to a Scheduled Caste. In his petition Sudhir had further claimed that he should be declared elected in the place of the appellant if the latter's election was found to be invalid. This prayer, however, was rejected by the High Court. These two appeals are from the judgment of the High Court. Appeal No. 931 of 1965 is by Abhoy Pada. He challenges the validity of the order of the High Court setting aside his election. Appeal No. 1149 of 1965 is by Sudhir and he challenges the validity of the order of the High Court rejecting his prayer to be declared elected. We shall first deal with Appeal No. 931 of 1965 filed by Abhoy Pada and shall hereafter refer to him as the appellant and Sudhir as the respondent.

Art. 332 of the Constitution provides that seats shall be reserved for the Scheduled Castes in the Legislative Assembly of every State. Art. 341 gives power to the President to specify by public notification the castes or parts of or groups within castes which shall for the purpose of the Constitution be deemed to be Scheduled Castes. The President, on August 10, 1950, passed the Constitution (Scheduled Castes) Order, 1950 under Art. 341 setting out in its schedule the various castes which were declared Scheduled Castes. This Order was amended from time to time by statutes passed by Parliament and it is agreed that at the relevant time Item 40 of Part 13 of the schedule to the Order which set out which were Scheduled Castes in West Bengal stood as follows : "Sunri excluding Saha". Item 40 and some other items of the schedule were made applicable to the State of West Bengal except the Purulia District and the territories transferred from Purnea District

of Bihar and it is with this item that we are concerned. The question, is whether the appellant was a member of the Scheduled Caste specified in this item.

In the election petition, the respondent had stated that the appellant, was a member of the Saha caste and not a member of any Schedule Caste. It was said that this showed that the respondent's case was that the appellant belonged to an independent caste which had nothing to do with Sunri caste and that it was, therefore, not open to him at the trial to contend, as he appears to have done, that the appellant was a Sunri by caste but was excluded from the Scheduled Caste group because he belonged to a smaller caste group of Sunirs known as Sahas. We are unable to take this strict view of the pleading. The petition may, in our opinion, be reasonably read as stating that the appellant was a member of the Saha caste, a smaller caste group within the bigger caste group of Sunirs and was for that reason not a member of the Scheduled Caste specified in item 40. We also observe that this reading of the petition which was accepted by the Election Tribunal, did not cause any surprise to the appellant at the trial or result in any injustice. The High Court also read the petition in the same way. In our view, it was open to the respondent to show that the appellant belonged to the Saha caste group within the Sunri caste group and did not, therefore, belong to the Schedule Caste specified in item 40 as he claimed.

The Tribunal rejected the respondent's case that the Sunri caste was divided into certain groups of which the Sahas formed one. It came to the conclusion that the Sahas originally belonged to the Sunri caste but for a long time past they had formed themselves into a different caste which had no connection with the Sunris. It is not very clear whether the Tribunal thought that the Sahas were originally a smaller caste group within the Sunri caste group or were only distinguished from the other Sunris by their surname. We are, however, incline to think that the Tribunal thought that the Sahas were originally a smaller caste group within the Sunri caste because it rejected a contention advanced by the respondent that item 40 excluded from Sunris those who bore the surname Saha observing that the names given in the schedule to the order all referred to castes, subcastes or groups. It found that the evidence clearly established that the appellant belonged to the Sunri caste - a fact which appears to have been admitted by the respondent - and, therefore, did not belong to the independent caste which according to the Tribunal, the Sahas have formed for a long time past. In that view of the matter, the Tribunal held the appellant to be a Sunri and a person belonging to the Schedule Caste specified in item 40 and, therefore, dismissed the election petition. It took the view that item 40 had excluded Sahas from Sunirs by way of abundant caution, so that the Sahas who had originally belonged to the Sunri caste but had long ago served all connections with it and developed into a distinct and independent caste, might not claim, by virtue of their origin, to belong to the Sunri caste stated in the item.

In the High Court P. N. Mookerjee, J. observed that the Tribunal had gone wrong in considering the Sahas as an independent caste. He said that the expression "excluding" denoted that the Sahas contemplated would, but for this word, have come within the Sunri caste. He held that the Sahas formed "a group within the Sunri caste be it a sub-case strictly so called or otherwise". He also held that the evidence did not establish that the Sahas formed a sub-caste strictly so called within the Sunri caste or a caste wholly independent of the Sunri caste. His conclusion was that the expression "excluding Saha" referred to those Sunris who bore the surname Saha irrespective of whether they belonged to a sub-caste strictly so called, of Sunris or not. The learned Judge, therefore, held that as the appellant bore the surname Saha, he did not belong to the Scheduled Caste specified in item 40 though he was a Sunri. The other learned Judge, Basu, J. held that the words "parts or groups within castes" in Art. 341 were wide enough to refer to any determinate part of a caste distinguished by a surname or otherwise and it was not necessary that such part must necessarily form a sub-caste. He

also held that the evidence broadly supported "the conclusion that the respondent's family belongs to the Saha sub-caste or group within the Sunri caste". The learned Judge however, appears to have set aside the decision of the Tribunal and directed the election of the appellant to be set aside on the ground that the appellant bore the surname Saha and was thereby excluded from the Scheduled Caste specified in item 40 for he said "these Saha families, within the fold of Sunri caste, distinguished themselves by their surname, whatever might be their other characteristics" and have come to form a class apart from the rest of the Sunris.

Now, the point in issue is, whether the appellant satisfied the description "Sunri excluding Saha" in item 40 of the President's Order. To decide that point, the description has first to be properly interpreted and understood. As we have said, the Tribunal thought that the Sahas formed a distinct caste wholly outside the Sunri caste and they had been specifically excluded in item 40 for greater safety to prevent them from claiming to be Sunirs by reason of their origin. The learned Judges of the High Court thought that the effect of the item was to exclude from the Sunri caste those who belonged to that caste but bore the surname Saha. We are unable to agree with either of these interpretations.

There is no doubt that Sunri is a caste. Nobody disputes that. That also follows from the fact that the Constitution (Scheduled Castes) Order, 1950 was promulgated to indicate those castes who are to be considered as Scheduled Castes for the purpose of the Constitution. "Sunri" in item 40, therefore, refers to a caste. If Sunri is a caste, the word 'Saha' in the expression "excluding Saha" in the item must, without more, also refer to a caste group within the Sunri caste. It is legitimate to think that when a statute says that a thing is to be excluded from another, both things are of the same kind; if one is a caste, the other must be a caste. It follows that when the item excluded Sahas from Sunris, since Sunri is a caste group, Saha must equally be another caste group. The Tribunal appears to have taken the same view. Now a thing can be excluded from another only if it was otherwise within it. Therefore, the correct interpretation of the item is that it indicates men of the Sunri caste but not those within that caste who formed the smaller caste group of Sahas. This is where the Tribunal went wrong.

The Tribunal came to its conclusion that "Saha" in the item referred to a caste distinct from the Sunri caste because the evidence before it did not show that there was within the Sunri caste, a smaller caste group called Sahas. The error of the Tribunal lay in interpreting the Order in the light of the evidence before it. There was no justification for doing that. Afterall, the evidence led in a case may be imperfect. Suppose the evidence in another case led to the conclusion, as it might conceivably do, that there was a smaller caste group within the Sunri caste, called Sahas. In that case, if the reasoning applied by the Tribunal is right, it has to be held that the expression "excluding Saha" meant excluding a smaller caste group called Sahas. A method of interpreting a statutory provision which might lead to such uncertainty cannot be correct. If the correct interpretation of item 40 was, as we think it was, that Sahas were a caste group within the Sunri caste, no question of Sahas being a distinct class independent of Sunris could arise. The finding that Sahas were a wholly independent caste was altogether irrelevant to the point in issue. Evidence cannot alter the natural interpretation of the words in the Order.

For the same reason, we are unable to agree with the interpretation of the High Court that the Sahas excluded were those Sunris who bore the surname Saha. We think the learned Judges of the High Court also interpreted item 40 in the light of the evidence in the case. If the intention was to exclude from Sunris those members of that caste who bore the surname Saha, the item would have said so; it would then have read "Sunri excluding those who bore the surname Saha". In the absence of such

words "Saha" must, in the context, be understood as referring to a smaller caste group within the bigger caste group of Sunris. Surname is irrelevant as a test for applying item 40 unless it is shown that it indicated a smaller caste group of Sunris. It is nobody's case that there is evidence to show that. It is of interest to remind in the connection that the Order provides that the Sunris in the Purulia District and those parts of the Purnea District which had been transferred to West Bengal were not to be considered as belonging to a Scheduled Caste. That would show that where the exclusion is by a test other than a caste group, the Order expressly says so. It is natural to think that if the excluded Sahas were those Sunris who bore the surname Saha, the Order would have made that clear. In our opinion, the learned Judges of the High Court were in error in interpreting the item on the evidence in the case as they appear to have done.

If we are right in our interpretation of item 40, then the only question that has to be decided in this case is, whether the respondent has established that the appellant belonged to a smaller caste group called Sahas within the Sunri caste. This question presents no difficulty. The respondent called witness to establish that the appellant belonged to the smaller caste group of Sahas. These witnesses were disbelieved by the Tribunal which described them as unreliable. P. N. Mookerjee, J. said, "it has not been proved that the respondent (appellant here) belonged to any separate Saha caste or to any Saha - Sunri sub-caste of the Sunri caste". Though Basu, J. said that the appellant belonged to the Saha group of Sunris, it would appear that he was thinking of that group as consisting of those Sunris who bore the surname Saha. All the courts in West Bengal, therefore, came to the conclusion that it had not been proved in this case that the appellant belonged to the smaller caste group of Sahas. We have no reason to take a different view of the evidence. The result then is, that the appellant is a Sunri by caste and has not been proved to belong to the smaller caste group of Sahas. He must be held to belong to the Scheduled Caste specified in item 40. That being so, the election petition must fail.

Accordingly, we allow appeal No. 931 of 1965 and set aside the judgment of the High Court and restore that of the Election Tribunal dismissing the petition. The appellant will get the costs throughout.

In the view that we have taken in Appeal No. 931 of 1965, the other appeal must necessarily be dismissed and we, therefore, dismiss it with costs. One set of hearing fees only.

Appeal No. 931 of 1965 allowed.

Appeal No. 1149 of 1965 dismissed.

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