

Parsram and Another

Vs

Shivchand and Others

Civil Appeal No. 1869 of 1967

(CJI M. Hidayatullah, G. K. Mitter JJ)

28.11.1968

JUDGMENT

MITTER, J. –

In the election petition out of which the present appeal arises, the main question canvassed was, whether the nomination paper of respondent No. 8 (appellant No. 2 before this Court) was wrongly rejected. It is admitted that if the rejection was wrong, the election cannot stand.

The petitioner challenged the election to the Lambi Assembly Constituency (reserved seat) in the district of Ferozepore. There were eight candidates, the first respondent being the returned candidate. The petition was filed by one of the unsuccessful candidate impleading the other seven candidates, and Kishan Lal whose nomination paper was rejected. According to the petitioner, Kishan Lal was a Hindu and being a Chamar by caste he belonged to a scheduled caste within the meaning of Paragraph 2, read with Part X of the Constitution (Scheduled Castes) Order, 1950, issued under Article 341 of the Constitution he had filed a declaration under Section 33(2) of the Representation of People Act, stating his caste to be Chamar covered by Item 9 in Part X (Punjab) of the Schedule to the Order. The said item reads as follows :

"Chamar, Jatia Chamar, Reghar, Raigarh, Ramdasi or Ravidasi."

It was stated in the petition that the returning officer had at first accepted the nomination paper of Kishan Lal on 21st January 1967, but subsequently on an objection having been raised by the first respondent on the ground that Kishan Lal was not a member of a Schedule Caste, the proceedings were adjourned till the next day when after admitting evidence, the same was rejected on the plea that Kishan Lal was a Mochi by caste. The petitioner's case was that Chamar and Mochi were not two separate castes and the word 'mochi' was applied to a Chamar who actually started working in leather. On the pleadings the learned trial Judge framed four issues.

1. Is respondent No. 8 Kishan Lal a Hindu Chamar by caste which is a scheduled caste within the meaning of Part X of the Schedule to the Constitution (Schedule Castes) Order, 1950 ?
2. Was the nomination paper of respondent No. 8 Kishan Lal accepted by the Returning Officer and if so, whether the Returning Officer had the power of reviewing his order ?
3. Has the nomination paper of respondent No. 8 Kishan Lal been wrongly rejected ?

If so, is the election of the returned candidate void ?

4. Is Chamar or Mochi one and the same caste and ex-scheduled caste within the meaning of Part X of the Schedule to the Constitution (Scheduled Castes) Order, 1950 ?

The point canvassed before him with a good deal of force was that the returning officer had sought to review his own order passed on 21st January, 1967, accepting the nomination paper and this, he was not competent to do. The learned Judge did not accept that a finalised order had been reviewed. An examination of the document tends to support the appellant arguments about the nomination paper having been accepted at first but rejected subsequently. The manner of recording the order is suggestive of the above. It appears that the Returning Officer at first wrote the word 'accepted' and gave the date as 21-1-1967 to the left of his signature the endorsement rejecting the nomination paper is by way of a post-script abbreviated as "P.S." the last two lines curving over the signature. Unfortunately, however, for the petitioner, the Returning Officer, although he appeared in court to produce some documents, was not orally examined and we are therefore without his testimony on the subject. Kishan Lal who came to give evidence in this case in support of the petition stated in his examination-in-chief that :-

"At the time of the scrutiny of the nomination paper for elections in 1967 the Returning Officer at first announced orders on my nomination papers accepting the same. Then an objection was raised by respondent No. 1 Shiv Chand. Thereafter the Returning Officer adjourned the matter to the next date on which after examining evidence led by the parties he rejected the nomination papers".

Prima facie this goes to support the case of the petitioner, but in cross-examination, Kishan Lal stated :

"At the time when the nomination papers were being scrutinised by the Returning Officer, an objection was raised when he was writing the order."

This nullifies the effect of the statement in the examination-in-chief and suggests that this objection was raised before the order had been signed or announced. This is strengthened by the evidence of Shiv Chand R.W. 7. He said :

"The Returning Officer had not announced that he had accepted the nomination paper of Kishan Lal but had written the word 'accepted'. This I know because I was sitting next to him".

On this evidence, it is not possible to hold that the Returning Officer had announced his decision accepting the nomination paper, but had reviewed his own order afterwards an objection being raised and let in evidence on the next day and rejected the nomination paper.

Before the learned trial Judge, a good deal of evidence was adduced and arguments advanced as to whether the words 'chamar' and 'mochi' were synonymous and even if Kishan Lal was held to be a Mochi, there was no reason to exclude him from the fold of the caste of Chamars in which case his nomination paper was wrongly rejected. For this we have to refer to Article 341 of the Constitution under Clause 1 of which the President may, with respect to any State or Union Territory, and where it is a State, after consulting the Governor of the State, by public notification specify the castes, races or tribes which shall for the purposes of the Constitution, be deemed to be Scheduled Castes in

relation to that State or Union Territory as the case may be. This article empowered the President to specify not only the entire castes but tribes or parts or groups within castes, races or tribes which were to be treated as Scheduled Castes in relation to particular caste. So far as Chamars and Mochis are concerned, it will be noticed from a reference to the Constitution (Scheduled Castes) Order, 1950, that the President was not of opinion that they were to be considered belong to the same caste in all the different States. For instance, in the States of Andhra Pradesh, Bihar, Gujarat, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Orissa, Rajasthan and West Bengal, Chamars and Mochis were put on the same footing.

Before the Reorganisation of the Punjab Act of 1966, Item 9 of the Part of the Order specifying the Scheduled castes in the States read :

"Chamar, Jatia Chamar, Reghar, Raigar, Ramdasi or Ravidasi".

After the reorganisation of territories and creation of new States by the said Act the Scheduled Castes Order was amended providing for the specification of Scheduled Castes for the new States and territories. The Constitution (Schedule Castes) (Union Territories) Order of 1951, was also amended in 1966. As a result of the above changes, the final position with regard to the Scheduled Castes was as follows. Item No. 9 remained unaltered as regards the new States of Haryana and the Punjab. Chamars and Mochis were put in the same class as regards the Union Territory of Delhi and Himachal Pradesh, while the position in the Union Territory of Chandigarh remained the same as in the old States of Punjab. This shows that even when the subject of specification of Scheduled Castes engaged the attention of the President in 1966, he did not take the view that Mochis should be classed together with Chamars in so far as the States of Haryana, Punjab and the Union Territory of Chandigarh were concerned. It is also clear that the question of inclusion of Mochis in the Scheduled Castes was considered by him. Apart from this, there are two decisions of this Court which conclude the point.

In *Basavalingappa v. D. Municharappa and others* (1965-1 SCR 316) an election petition was filed challenging the election of the first respondent inter alia on the ground that he was not a member of any of the scheduled castes mentioned in the Constitution (Scheduled Castes) Orders, 1950. 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, he could not stand for election from a scheduled caste constituency. It was held by this Court it was not open to anyone to seek for any modification in the order by producing evidence to show (for example) that though caste A alone was mentioned in the Order, caste B was also a part of Caste A. This Court also pointed out that "wherever one caste has another name it has been mentioned in brackets after it in the Order. Therefore, generally speaking, it would not be open to any person to lead evidence to establish that caste B is part of caste A notified in the Order". In the peculiar circumstances of this case, evidence was allowed to be led to identify the caste specified in the Order because the Order referred to a Scheduled Caste known as Bhovi in the Mysore State as it was before 1956 and therefore it had to be accepted that there was some castes which the President intended to include after consultation with the Rajpramukh in the Order, when the Order mentioned the caste Bhovi as a scheduled caste. But when it was not disputed specifically that there was no caste known as Bhovi in the Mysore State before 1956, the only course open to courts was to find which caste was meant by Bhovi by taking evidence.

A point very similar to the one before us came up for consideration in this Court in *Bhaiya Lal v.*

Harikrishan Singh and others. (1965-2 SCR 877) There, the appellant's election was challenged on the ground that he belonged to the Dohar caste and was not a Chamar. Dealing with this point, it was stated by this Court :

" the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in virtue of the Constitution (Scheduled Castes) Order, 1950".

Reference was then made to Article 341 of the Constitution classes 1 and 2 and it was said :

"In order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 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 Article 341".

These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazetteers and the glossaries on the Punjab castes and tribes to which reference was made at the Bar to find out whether Mochi and Chamar in some parts of the State atleast meant the same caste although their might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which Mochis do not. However that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a Mochi, he could still claim to belong to the scheduled caste of Chamars and be allowed to contest an election on that basis. Quite a lot of evidence was adduced orally and also by documents before the learned trial Judge to show that Krishan Lal was a Chamar and not a Mochi. The learned Judge examined the evidence thoroughly and we do not propose to do the same again. In his view Krishan Lal was Mochi and not a Chamar and we do not see any reason why we should come to any different conclusion.

Once we hold that it is not open to this Court to scrutinise whether a person who is properly described as a Mochi also falls within the caste of Chamars and can describe himself as such, the question of the impropriety of the rejection of his nomination paper based on such distinction disappears. In this case, Krishan Lal was found to be a Mochi and not a Chamar and therefore his nomination paper was rightly rejected. He tried to prove by evidence that he was a Chamar but he did not succeed therein. The appeal therefore fails, and is dismissed with costs.

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