

Kunwar Shri Vir Rajendra Singh

Vs

The Union of India and Others

Writ Petition No. 190 of 1966

(S. M. Sikri, G.K. Mitter, K.S. Hegde, A.N. Ray, P. Jagmohan Reddy JJ)

30.09.1969

JUDGMENT

RAY, J. –

1. This is a common judgment in Writ Petition No. 190 of 1966 and Civil Appeal No. 1949 of 1966. The appellant made an application under Article 226 of the Constitution in the High Court of Punjab some time in the month of August, 1957, inter alia, for the relief as to why the records and proceedings of the case relating to the Dholpur Succession Enquiry Committee and the several notifications in that behalf mentioned in the petition should not be quashed.

2. In the petition under Article 32 of the Constitution the petitioner asked for quashing all actions and proceedings, order, direction and resolutions in connection with the delivery of the properties of the late Ruler of Dholpur to the respondent Hemant Singh, the adopted son of the late Ruler of Dholpur.

For the sake of brevity the petitioner who happens also to be the appellant will be referred to as the petitioner in this judgment.

The petitioner alleges that Maharaja Rana Udaibhan Singh of Dholpur died on 22 October, 1954 leaving behind private properties worth more than three crores of rupees. The estate left behind by the said Ruler of Dholpur is claimed to be an imputable estate, and, therefore, the petitioner claims to be entitled to the said estate according to law and custom of lineal male primogeniture.

3. The Dholpur State was formed in 1806. After the Indian Independence Act, 1947 the Dholpur State became integrated with the Matsya Union some time in the month of March, 1948. On March 30, 1949 the United State of Rajasthan was formed. The Matsya Union was eventually merged in the United State of Rajasthan on May 15, 1949. Some time in the month of March, 1949 there was a Covenant among the Rulers of several States comprised in the United State of Rajasthan. The Covenant, inter alia, provided in Article XII that the Ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties belonging to him on the date of his making over the administration of the State to the United State of Rajasthan and if any dispute arose as to whether any item of property is the private property or not, the dispute shall be referred to such person as the Government of India may nominate. Article XIV of the said Covenant provided that succession according to law and customs, to the Gaddi of each covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler were guaranteed and every question of disputed succession in regard to a covenanting State was to be decided by the Council of Rulers after referring the same to the High Court of the United State of Rajasthan and in accordance

with the opinion given by that High Court. On May 10, 1949 the Dholpur State and other States of the Matsya Union which merged with the United State of Rajasthan adopted the Covenant of the Rulers comprised in the United State of Rajasthan.

The last Ruler of Dholpur died on October 22, 1954 and did not leave him surviving any direct male heir. The petitioner alleged that the petitioner and his brother were the sons of the undivided next younger brother of the late Ruler and were, therefore, the next senior survivors to the succession according to the law of primogeniture. The last Ruler of Dholpur left behind him surviving his daughter who was married to the Maharaja of Nabha. The last Ruler's widow adopted a grandson, viz., one of the sons of the daughter and thus arose a controversy as to who was entitled to the Rulership of Dholpur.

4. The Government of Indian by notification, dated December 22, 1954 constituted a Committee consisting of the then Chief Justice of the Rajasthan High Court, the Maharaja of Bharatpur and the Maharao of Kotah to examine the contentions of the various claimants and to report to the Government of India who in the judgment of the said Committee was to be recognised by the President as the Ruler of Dholpur. Subsequently, there was a change in the Committee and the Maharao of Kotah was replaced by the Maharaja of Dungarpur. It may be stated here that the petitioner took part in the proceedings before the said Committee and that the petition relied on Article XIV of the Covenant and disputed the jurisdiction of the aforesaid Committee to go into the rival claims of the Rulership of Dholpur. The Committee held sittings and submitted a report to the Government of India. By notification, dated December 13, 1956, the President of India in pursuance of clause (22) of Article 366 of the Constitution recognised His Highness Maharaja Rana Shri Hemant Singh as the Ruler of Dholpur with effect from 22nd October, 1954.

5. Counsel on behalf of the petitioner contended, first, that the handing over or authorising taking over private properties worth more than three crores of rupees was by executive fiat and the Government Order was ex-facie bad and infringed Articles 19(1)(f) and 31 of the Constitution. The second contention was that the recognition of a Ruler even if it was an instance of excise of political power of the President was itself an insignia of property and, therefore, such recognition could only be by authority of law and would have to yield to fundamental rights. It was also said on behalf of the petitioner that after the Constitution, recognition of Ruler was not an exercise of political power. The third contention was that recognition of the Ruler under clause (22) of Article 366 of the Constitution meant recognising a fact that a person was a Ruler and the clause did not have the effect of empower the President to create the fact of bringing into effect a Ruler by recognising a person as a Ruler. As a corollary to the contention it was amplified that clause (22) of Article 366 was mainly defining or interpreting clause and, therefore, did not empower the President to recognise any Ruler. The fourth contention was that if there was any power to recognise the Ruler it was an arbitrary and unguided power and it would infringe the fundamental right to property. The fifth contention was that there was no dispute regarding Covenant inasmuch as succession did not arise out of the Covenant and, therefore, Article 363 of the Constitution was not attracted. The right to succession to private property was said to be independent of any Convenient.

6. The first question which falls for consideration is whether there is any infringement of Articles 19(1)(f) and 31 of the Constitution by any executive fiat or the Government order. The petitioner's contention is that by the executive order private properties worth more than three crores of rupees were handed over to the Ruler in violation of the petitioner's fundamental rights of property. The notification, dated December 13, 1956 published in the Gazette of India on December 22, 1956 was as follows :

"In pursuance of clause (22) of Article 366 of the Constitution of India the President is hereby pleased to recognise His Highness Maharaj Rana Shri Hemant Singh as the Ruler of Dholpur with effect from 22nd October, 1954 in succession to His late Highness Maharajadhiraja Sri Sawai Maharaja Rana Sri Udaibhan Singhji Lokendra Bahadur Diler Jang Jai Deo, G. C. I. E., K. C. S. I., K. C. V. O."

It is apparent that there is no notification by virtue of which the Ruler became entitled to private properties. The notification which recognised the Ruler did state that the Ruler thereby became entitled to private properties of the later Ruler. Mr. Attorney-General appearing for the Union also made it clear that no right to property flowed from the Government Order of recognition of Rulership. It is manifest that the right to private properties of the last Ruler depends upon the personal law of succession to the said private properties. The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties. In order to establish that there has been an infringement of rights to property or proprietary rights, the petitioner has to establish that the petitioner owns or has a right to property which has been infringed by the impugned act. In the present case, the petitioner cannot be heard to say that the petitioner possesses any private property which has been invaded. The petitioner's contention fails for two reasons. First, the recognition of Rulership by the President does not, as far as the President is concerned, touch any of the Private properties claimed. Secondly, the petitioner does not possess any private property which has been affected by the act of recognition of Rulership. It must be stated here that as far as the right to privy purse of a Ruler is concerned, Article 291 of the Constitution enacts that payment of any sum which has been guaranteed to any Ruler of a State as a privy purse shall be charged on and paid out of the consolidated fund of India. The privy purse is not an item of private property to which the Ruler succeeds. Counsel for the petitioner also realised the effect of Article 291 and did not press the contention of privy purse being a private property.

7. The next question for consideration is whether the President has power to recognise a Ruler. Counsel on behalf of the petitioner contended that clause (22) of Article 366 of the Constitution was a mere definition and did not confer any right on the President to recognise a Ruler. This contention is not correct. In the first place, if it be said that clause (22) will be robbed of its real content and the definition will be bereft of the core for which the definition is enacted. Secondly, clause (22) does not contain any power will mean that the clause is empty and is devoid of the very purpose for which the definition is enacted. Thirdly, the most significant words in clause (22) of Article 366 are "for the time being is recognised by the President", not only in relation to a Ruler but also in relation to a successor of such Ruler. The words "is recognised by the President" indicate beyond any doubt that the power of the President to recognise a Ruler is embedded and inherent in the clause itself. Again, the words "for the time being" indicate that the President has power not only to recognise but also to withdraw recognition whenever occasion arises.

8. It was said by counsel for the petitioner that Article XIV of the Covenant which the late Ruler entered into with the United State of Rajasthan guaranteed succession and, therefore, the petitioner had a fundamental right to claim succession according to personal law. With the coming into effect of the Constitution the States ceased to exist as separate entities. The Covenants also ceased to be effective after the enactment of the Constitution in so far as the Covenants were inconsistent with the Constitution. The meaning of Article XIV of the Covenant is that the claim to succession on the basis of custom and law is preserved. Article XIV of the Covenant by itself is not evidence of any

custom or law. If the petitioner relied on Article XIV, the petitioner has to establish such right based on custom or law before the appropriate authority. Whatever rights the petitioner asserted in regard to succession were the subject matter of enquiry by the Committee which was constituted by the President to enquire into the rival claims to recognition of Rulership. The petitioner appeared before the Committee and preferred claims. The Committee was constituted to examine the contentions of rival claimants. The Committee gave its report as to who was best entitled to recognition by the President. It was entirely a matter within the province of the President to recognise a Ruler. The power to recognise a Ruler which is conferred on the President by the Constitution cannot be challenged on the ground that the power is unguided. The President exercised the power by appointing a Committee to examine the rival claims.

9. The recognition of Rulership is one of personal status. It cannot be said that claim to recognition of Rulership is either purely a matter of inheritance or a matter of descent by devolution. Nor can claim to recognition of Rulership be based only on covenants and treaties. That is why Article 363 of the Constitution constitutes a bar to interference by Courts in a dispute arising out of treaties and agreements. No claim to recognition of Rulership by virtue of a Covenant is justiciable in a Court of law. The Constitution, therefore, provided for the act of recognition of the Rulership by the President as a political power.

10. It has to be recognised that the right to private properties of the Ruler is not embraced within clause (22) of Article 366 of the Constitution which speaks of recognition of a Ruler by the President.

11. Counsel on behalf of the petitioner contended that the recognition of a Ruler itself instantaneously invested the Ruler with property and that Rulership and property were blended together. An illustration of combination of office and property in the case of Mathadhapti was cited as an analogy. The property is an appendage to the office in the case of Maths. The example of the office of a trustee furnishes the answer where office and properties are vested in the trustee. It cannot be said that recognition of Rulership is bound up with recognition of private properties of the Ruler because the former is within the political power of the President and the latter is governed by the personal law of succession. Recognition of Rulership by the President is not recognising any right to private properties of the Ruler because recognition of Rulership is an exercise of the political power of the President. The distinction between recognition of Rulership and succession to private properties of the Ruler has to be kept in the front. The rights to private properties of Rulers are not the matters of recognition of Rulership. The recognition of Rulership is to an indicia of property but it entitles the Ruler to the enjoyment of the Privy Purse contemplated in Article 291 and the personal rights, privileges and dignities of the Ruler of an Indian State mentioned in Article 362 of the Constitution. Therefore, recognition of Rulership is not a deprivation of right to property. If the petitioner has any claim to any private property said to belong to the last Ruler, the petitioner has not established any such claim in any court of law. It was said on behalf of the petitioner that the Ruler after recognition by the President came to possess private properties said to belong to the last Ruler. If the petitioner has any competing rights with the Ruler in relation to such private properties such a claim is neither a fundamental right nor is it comprised in the act of recognition of a Ruler by the President.

12. For these reasons, we are of opinion that the contentions of the petitioner fail. The petition and the appeal are both dismissed with one set of costs. PARSRAM AND ANOTHER, APPELLANTS v. SHIVCHAND AND OTHERS, RESPONDENTS.

Civil Appeal No. 1869 of 1967, decided on November 28, 1968.

## JUDGMENT

The Judgment of the Court was delivered by

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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