

Bhaiya Ram Munda

Vs

Anirudh Patar and Others

Civil Appeal No. 2039 of 1969

(V. Bhargava, J. C. Shah JJ)

14.08.1970

JUDGMENT

SHAH, J. -

1. At the "mid-term elections" held in January, 1969, Anirudh Patar (the 1st respondent in this appeal) was declared elected to the Bihar Legislative Assembly from the Tamar Assembly Constituency No. 296 (Scheduled Tribes). Bhaiya Ram Munda an unsuccessful candidate at the election applied to the High Court of Patna for an order setting aside the election on the plea that the 1st respondent was not a member of a Scheduled Tribe and was on that account not qualified under Section 5 of the Representation of the People Act, 1951, to be chosen to fill a seat in the Legislative Assembly of Bihar from a reserved constituency for a Scheduled Tribes. The High Court dismissed the petition holding that the 1st respondent was a member of a Scheduled Tribe called "Munda" specified in Part III of the constitution (Scheduled Tribes) Order, 1950, issued in exercise of the powers under Article 342 of the Constitution. Bhaiya Ram Munda has appealed to this Court under Section 116-A of the Representation of the People Act, 1951.

2. Section 5 of the Representation of the People Act, 1951, provides :

"A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

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Article 342 of the Constitution, in so far as it is relevant, provides :

"(1) The President may with respect to any State or Union territory, X X X by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes 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 Tribes specified in a notification issued under clause (1) any tribes or tribal community or

part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

3. In exercise of the powers conferred by Article 342, the President issued an Order called the Constitution (Scheduled Tribes) Order, 1950, which by the second clause provided :

"The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in Parts I to XII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule."

In the Schedule the names of certain tribes are set out, and in Part III under the heading the State of Bihar are designated certain tribes. The tribes designated in Part III are deemed to be Scheduled Tribes throughout the State of Bihar. Munda does but Patar does not occur in Part III. The 1st respondent contended that Patars are Mundas, and that it is only non-Mundas who call the various exogamous groups belonging to the tribes residing generally in Singbhum and the adjacent area and belonging to various Kilis as Mundas, or Patar Mundas, Mahali Mundas, Tamarias, Punduars and Marang Mundas and others. He contends that he does not cease to be a Munda merely because his family name is Patar.

4. The appellant raised two arguments in support of his petition-(1) that Patars are not Mundas, and not being a Munda, and (2) that even if Patars and Mundas, since the name of Patar has not been included in the Constitution (Scheduled Tribes) Order, 1950, Part III applicable to Bihar, he cannot be chosen to sit in the Assembly from the reserved constituency by merely calling himself a Munda.

5. Considerable evidence oral and documentary was tendered before the High Court. In support of his case the appellant relied upon-(1) a sale deed executed by the 1st respondent on January 11, 1969, which recited that the 1st respondent did not claim the status of a member of a Scheduled Tribe; (2) entries in the revenue records and (3) oral evidence of witnesses who deposed that the 1st respondent was not a Munda.

6. In support of his case the 1st respondent relied upon-(1) a judgment of the High Court of Patna declaring that Patars are Mundas; (2) Khatian entries in which Patars were entered as Mundas; (3) a certificate, dated July 15, 1941, given by Rai Bahadur Sarat Chandra Roy (many years before the date on which the dispute arose) certifying that one Kshetra Mohan Patar, son of Gobardhan Patar of village Kamar Hapa, Thana Tamar, District Ranchi belonged to the Patar (Munda) tribe; and (4) oral testimony of the witnesses who deposed that the 1st respondent was a Munda.

7. The name of the first respondent was entered in the voters' list as a member of a Scheduled Tribe. The first respondent stood as a candidate for election to the Bihar State Legislative Assembly in 1962, and was elected from the Scheduled Tribe Constituency. Nomination was filed by him at that election as a Patar. In 1967 too the first respondent stood from the Tamar Scheduled Tribe Constituency for election to the Bihar Legislative Assembly but he was defeated. It also appears from the record that Mr. Jaipal Singh who was also a Patar was elected as a member of Parliament to a reserved seat from a constituency in the Bihar State as a member of the Scheduled Tribe.

8. The first question to be determined is whether Patars are not Mundas : The appellant placed

strong reliance upon a sale deed executed by the first respondent on January 11, 1969 (few days before the elections) conveying property and declaring therein that the first respondent was not a member of any Scheduled Caste or backward community. Under Section 46 of the Chhota Nagpur Tenancy Act VI of 1968, without the sanction of the Deputy Commissioner the members of the Scheduled Tribes cannot transfer their lands. It is common ground that to the area of the Tamar Constituency that Act applied. A deed evidencing sale of land presented for registration by a member of a Scheduled Tribe could not be registered unless the sale was sanctioned by the Deputy Commissioner. According to the first respondent it was the vendee who inserted into the deed the statement in order to avoid refusal of registration by the authorities. Assuming that the statement was incorporated in the deed with the consent of the first respondent no estoppel arises against him. Whether a particular person is a member of a Scheduled Tribes so declared by the President under Article 342 of the Constitution is essentially a question of law. Though an admission made by him expressly or by implication that he is not a member of a Scheduled Tribe is evidence against him in an election petition, the evidence is not conclusive.

9. Khatian entries Exts. I/a and I/b show that sale deeds executed by Patars were admitted to registration and mutation entries were posted pursuant thereto. There is no evidence whether in respect of those sale deeds permission of the Deputy Commissioner was taken before they were executed. It is not possible to infer from the revenue entries that sanction of the Deputy Commissioner was not obtained, or that Patars are not Mundas. Granting that the prohibition contained in Section 46 of the Chhota Nagpur Tenancy Act was violated by a member of a Scheduled Tribe, he will not on that account be disentitled to claim the status of a member of a Scheduled Tribe. The transactions of sale may be valid, but it cannot be said, relying on that ground alone, that the transferor was not member of a Scheduled Tribe or was estopped from setting up that status. Exts. 1(g) and 1(h) are sale deeds executed by Mundas and sanction of the Deputy Commissioner was obtained before execution of the sale deeds. Exhibits 4 and 4(a) are certified copies of two Raiyati Khatians in which the caste of the tenants who were Patars is mentioned as Patar, but from that also no inference arises that they are a tribe distinct from Mundas.

10. The oral evidence led on behalf of the appellant is unconvincing, Faud Singh Munda, P.W. 1 asserted that Patars are not a branch of the Munda Tribe, but they are a separate caste. According to him Patars could convey their property without the permission of the Deputy Commissioner, that Pahans perform ceremonies in the families of Mundas, but Brahmins assisted by barbers perform religious ceremonies in the families of Patars; that Mundas do not offer PIND in SHRADH, patars do offer; that the Sun is the supreme deity for the Mundas but Patars worship Rama and Krishna; and that Mundas celebrate Sarhul festival, but Patars do not. In cross-examination he stated that he has never attended any Patar marriage ceremony or Shradh and that he had not seen any Patar offering any PIND but had only heard about it. The witness was unable to say how Patars performed the Puja. It appeared that he had not much information even about Mundas customs and ceremonies.

11. The statement of Gandharb Singh Munda, P.W. 2 in examination-in-chief was similar to the testimony of P.W. 1. In cross-examination the witness stated that Mundas were not Gonds but they were "a separate caste" and that he had never attended a Patar marriage ceremony and was never invited by any Patar on the occasion of SHRADH. He admitted that non-Mundas also celebrated Sarhul. But according to him Patars from other villages came to worship goddess DIURI of his village which was worshipped by Mundas. He did not appear to be competent to speak about the customs and usages of Patars as distinguished from those of Mundas. The witness did not know that those who are generally called Mundas are in reality Komput Mundas.

12. Sudhir Kumar Choudhury, P.W. 4 (who is a Brahmin) stated that there were Mundas in Tamar village; that his next door neighbour was a Munda; and that Brahmins performed the marriage and SHRADH in the families of Mundas. He stated that all the deities who are worshipped by Hindus are worshipped "in the family of the first respondent" and that marriage and SHRADH ceremonies are performed in the family of the first respondent in the same way as they are performed in Hindu families. The witness admitted that he had not personally seen the performance of Puja of Rama and Krishna in the house of the first respondent. The High Court observed that the answers given by the witness in his cross-examination indicated that he had no familiarity with the customs of Mundas.

13. Abhimanyu Singh Munda, P.W. 5 stated that the first respondent was a Patar by caste and the customs of marriage and SHRADH amongst the Mundas and Patars were different. In cross-examination he said that in the area within the Tamar Police Station Mundas speak Mundari, whereas Patars speak Panch Pargania. This was, however, plainly contrary to what the other witnesses had stated. He said that there was only one family of Patars in his village and that he was invited by that family on the occasions of marriage and Shradh and that he did not know the Gotra of that family. He further stated that all the Scheduled Tribes of Chhota Nagpur drink Hanria but the witness denied that Patars drink Hanria. In the view of the High Court, reliance could not be placed upon the testimony of this witness. We see no reason to disagree with it.

14. P.W. 6 is the appellant himself. He repeated what was stated by P.W. 1, P.W. 2 and P.W. 5. He asserted that Patars do not belong to a Scheduled Tribe. He admitted however that he had never attended any ceremony of marriage or SHRADH or any other function in a Patar family and that he could not competently speak about the ceremonial customs of Patars. He also denied that the son of P.W. 1 was an employee of the Seva Mandal, a fact which was admitted by P.W. 1.

15. The first respondent has relied in support of his case upon Exts. A, B, B/1 and C. Exhibit A is the certificate issued by Rai Bahadur Sarat Chandra Roy certifying one Kehetra Mohan Patar as belonging to the Patar (Munda) tribe. Exhibits B and B/1 are entries in the Khatian and Ext. C is the judgment delivered by Ahmad, J., of the Patna High Court in a case relating to the acceptance of Patars as Mundas.

16. Kshetra Mohan Patar R.W. 1 stated that there were several sects amongst the Mundas and Patar was one of such sects. The witness further stated that Patars officiate as priests at the time of marriages in the families of all the sub-castes Mundas and Brahmins do not officiate as priests on such occasions; that Patars also bury the bones of such dead bodies which are burnt at a place called SASAN or HARGADDI and that they also worship the Sun and other deities worshipped by Mundas. He also spoke about the inter-marriage between Patars, Bhumija and Mahalia which were sub-castes of Mundas.

17. Daroo Pahan, R.W. 2 is not a Patar but a Munda. He stated that Khangars and Patars are sub-castes of Mundas, that some boys of Mundas of his village had married Patar girls, that those boys with their Patar wives were living in his village. He also said that Puja was performed by his brother, when Barats of Mundas returned to the village with Patar wives. He gave details about the names of some of Patar girls married to Munda boys in his village.

18. Jamir Munda, R.W. 3 said that he had married a Patar girl; and that there were two main branches of Mundas-one consisting of Patars, Khangars and Mabalis and the other consisting of Babuans Mundas and Kol Mundas, and except Babuans other inter-married among themselves. He stated in cross-examination that Patar is merely a title and not a sub-caste.

19. Khudi Ram Munda, R.W. 4, stated that there were two main branches of Mundas-one consisting of Mundas, Patars, Khangars and Mabalais, and the other consisting of Mankis, Thakurs Babuans and Mundaris; that Pahans officiated as priests on the occasion of marriages in the family of Patars and Patars also performed Sarna Puja and celebrated Sarbul festival; that his nephew had married the daughter of a Patar and that his present wife was also a Patar. In cross-examination he admitted that those Patars who were rich, called Brahmins to perform Puja on ceremonial occasions.

20. Ram Jatan Patar, R.W. 5 stated that in the Khatian the case of his father was entered as Patar Munda. He further stated that the daughter of his nephew Satya Narain was married with the nephew of Khudi Ram Munda.

21. Raghunath Munda, R.W. 6, stated that there were two branches of Mundas-Mundas and Patar Mundas. He further stated that the customs followed by Patars on the occasion of marriages in their families were the same as followed by Mundas; that Patars as well as Mundas buried the bones of the dead at Sasandiril, that Panans generally officiated as priests at the ceremony of marriage among Mundas and Patars but those who were rich also called Brahmins to officiate as priests on those occasions; that the main festivals of Mundas as well as Patars were Sarbul and Buru Puja; and that Mundas and Patars both spoke Mundari.

22. Bahadur Patar, R.W. 7, gave similar testimony.

23. Harihar Singh Munda, R.W. 9, supported the testimony of witnesses, R.Ws. 3 and 4. He spoke about the various sects of the Mundas and also about the prevalence of some customs relating to marriages and other ceremonies of Patars and Mundas.

24. Kumar Amarendra Nath Sah Deo, R.W. 10, stated that in the marriages in the families of Mundas and Patars generally Pahans officiated as priests; that those who were rich also invited Brahmins on the occasion and there were inter-marriages between Patars and other branches of the Mundas. He also spoke about the custom of burying the bones of the deceased members in the families of Patars.

25. The first respondent, R.W. 11, stated that his name was entered in the voters' list prepared in 1960, that he was elected to the Bihar State Legislative Assembly in the elections held in 1962 and that he lost in the elections of 1967. He also corroborated the statements of his witnesses relating to the customs of Mundas and has asserted that Patars are Mundas.

26. Dr. Sachchidananda, R.W. 8, is a renowned anthropologist. He has made a study of the tribal culture in Bihar and has written several books on anthropology. In his book "Profiles of Tribal Culture in Bihar" and in his articles on Mundas in Bihar he has stated that Patars are Mundas. He confirmed that opinion on the basis of anthropological studies.

27. Dr. Sarat Chandra Roy in his publication "Mundas and this Country" at p. 400 has observed :

"The Munda tribe is divided into a large number of exogamous groups called Kilis. According to Munda tradition, all the members of the same Kili are descended from one common ancestor. But such a tradition may not be quite correct with regard to the original Kilis. Though exogamous as regards the Kilis, the Mundas are endogamous so far as other tribes are concerned. Thus, there can now be no valid marriage, according to Munda custom, between a Munda and the member of any other 'Kolarian' tribe, such as the Santals, X X."

Dr. Sarat Chandra Roy has then referred to the various sub-tribes known as Bhumij-Munda, Khangars and observed :

"In Parganas Bundu and Tamar, these Khangar Mundas are known as Pator Mundas, in parts of Khunti Thans are Mahli Mundas, in Singbhum as Tamarias, in Gangpur as Bunduars and in Pargana Balkaddi by the significant name of Marang Mundas."

In his "Profiles of Tribal Culture in Bihar" Dr. Sachchidananda has said at p. 40 :

"The entire Munda tribe consists of an elder and younger branch, the Mahali Mundako and the Komnat Mundako, respectively. The former are found mainly in Tamar Pargana of the Ranchi District and are also known as Patar. Ordinary Munda or those belonging to the younger branch form the bulk of the Munda population. Both these branches are endogamous. The former are considered socially inferior to the latter."

The author then stated at p. 41 :

"In Tamar area the social stratification among the Munda has reached a developed form. Six distinct classes or castes may be distinguished. These may be grouped into two, viz. : (a) the zamindars or landlords and (b) the tenants. In group A we have at the top, landlords called Thakur who hold above fifteen villages each. Next come Manki who are lesser landlords holding upto ten or eleven villages each. X X In group B are the Mundari who are Munda tenants. Inter-marriage between Mundari and the above mentioned four classes is well nigh impossible due to great disparity in economic and social status. At the bottom of the Munda society in Tamar are the Patar who belong to the Mahali-Mundako branch of the tribe. Though they hold small bits of land there is no social intercourse between them and the upper five groups. Not only is inter-marriage unthinkable but even water cannot be taken from the hands of a Patar."

Patars are it appears regarded as the lowest in the social order amongst the Mundas but they are still Mundas.

28. In Encyclopaedia Mundarica by Rev. John Hoffmann in collaboration with Rev. Arthur Van Emelen, Vol. IX, at p. 2881 it is stated that "Munda is a name which has been given to the Mundas by the Hindus" and is exclusively used by all but the Mundas themselves. Under the heading Munda are given the names of different sub-tribes of the Mundas one of which is Mahali. At p. 2756 in the same book after the head "Mahali" it is said that a Munda is a Munda of the elder branch. The author then proceeded to say that the Mahalis are also called Tamdias especially by Hindus and in Chhota-Nagpur they are called Khangars. In Tamar they are called Patars. The Mundari they speak is characterized by a great number of vocal checks. They have practically all the clans (Kilis) found amongst the Mundas.

29. The evidence given on behalf of the first respondent is amply supported by studies made by distinguished anthropologists. The first respondent was without any objection recorded in the voters' list as a member of the Scheduled Tribe. He was elected in 1962 elections from a Scheduled Tribe constituency. He again contested the election from that constituency in 1967 but he was defeated. It is only in 1969 when at the fresh elections that he contested the seat and was declared elected when

an objection was raised that he did not belong to a Scheduled Tribe. On a consideration of all the evidence we are of the view that Patars are a sub-tribe of Mundas and that they are not different from Mundas.

30. The alternative argument advanced by counsel for the appellant has also no substance. It is true that in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, issued under Article 342 of the Constitution the name "Munda" is mentioned and similarly the names of other sub-tribes amongst Mundas are mentioned. Counsel for the appellant contended that if according to Dr. Sachchidanand Mahalis, Ho, Bhumijis, Assur, Baaig and Khangara are Mundas, specific mention of some of those tribes in the Schedule Tribes Order clearly indicated that Patars who are not mentioned therein are not a scheduled Tribe within the meaning of the Order. There is, however, no warrant for that view. If Patars are Mundas, because some sub-tribes of Mundas are enumerated in the Order and others are not, no inference will arise that those not enumerated are not Mundas. We are unable to hold that because Patars are not specifically mentioned in the List they cannot be included in the general heading Munda.

31. Decisions in support of the contention that the Courts cannot allow evidence to be taken for proving that certain classes of people though not expressly designated in the Presidential Order were intended to be covered by the Order may be briefly referred to. It may suffice to state, however, that it is not the case of the first respondent that Patars are a distinct community, but that they should be regarded as Mundas because of the similarity of customs, religious beliefs, forms of worship and other social obligations.

32. In *B. Basavalingappa v. D. Munichinnappa* the relevant facts were that M who was elected from a Scheduled Castes constituency claimed to belong to the Bhovi caste which was one of the Scheduled Castes mentioned in the Constitution (Scheduled Castes) Order, 1950 issued by the President under Article 341 of the Constitution. In an election petition it was claimed that M belonged to the Voddar caste which was not mentioned in the Order and that on that account M was not entitled to stand for election from Scheduled Caste constituency. Evidence was led before the Election Tribunal that Bhovi was a sub-caste of the Voddar caste and M did not belong to the Bhovi sub-caste he could not stand for election from the constituency. The High Court in appeal held that although Voddar caste was not included in the Order, yet considering the facts and circumstances in existence at the time when the Order was passed in 1950, the Bhovi caste mentioned in the Order was the same as the Voddar caste. In appeal to this Court it was contended that the High Court was wrong in considering the evidence and then coming to the conclusion that the caste Bhovi mentioned in the Order was meant for the caste Voddar and that the Tribunal should have declined to allow evidence to be produced which would have the effect of modifying the Order issued by the President. This Court held that the evidence clearly showed that in 1950 when the Order was passed there was no caste in the then Mysore State which was known as Bhovi and the Order could not have intended to recognise a caste which did not exist. It was therefore necessary to find out which caste was meant by the use of the name Bhovi and for that purpose evidence was rightly recorded by the Tribunal and acted upon by the High Court. This Court accordingly confirmed the view of the High Court. The decision in this case lends no support to the contention that evidence is inadmissible for the purpose of showing what an entry in the Presidential Order was intended to mean.

33. The next case in the order of sequence is *Bhaiyalal v. Harikishan Singh and Others.* ((1965) 2 SCR 877 : AIR 1965 SC 1557 : (1966) 2 SCJ 77) In that case an election to a State Legislature was challenged on the ground that the successful candidate belonged to the Dohar caste which was not

recognized as a Scheduled Caste for the district in question, and on that ground the successful candidate was not competent to stand for election. The Election Tribunal declared the election invalid and the finding was confirmed on appeal by the High Court. It was held by this Court that the plea that the appellant is not a Chamar, and as such, he could not claim the status of a Chamar claiming that he belonged to Dohar Caste which is a sub-caste of the Chamar Caste, and that an enquiry of the kind would not be permissible having regard to the provisions contained in Article 341 of the Constitution. It was urged in that case that Chamars were recognised as a Scheduled Caste but not the Dohar. The successful candidate was, it was found, a Dohar and was not a Chamar. The Court declined to allow a plea to be raised that Dohars were in some areas recognised as a sub-caste of Chamars. The contention was plainly futile, once it was held that the candidate was not a Chamar in the constituency to which the Order related and Dohars were not a Scheduled caste. The Court observed that in specifying castes, races or tribes under Article 341 of the Constitution, the President had been expressly authorised to limit the notification to parts of or groups within the caste, race or tribe, and the President may well come to the conclusion that not the whole caste, race, or tribe, but parts of or groups within them 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 the parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. On that view the Court upheld the decision of the High Court that the successful candidate who was a Dohar was not, in the constituency from which the case arose a Chamar within the meaning of the Constitution (Scheduled Castes) Order, 1950.

34. In *Laxman Siddappa Naik v. Kattimani Chaniappa Famappanna & Others* ((1968) 2 SCR 805 : AIR 1968 SC 929 : 2 SCJ 560) an unsuccessful candidate for election to the Mysore Legislative Assembly for a seat reserved for a member of the Scheduled Tribes filed an election petition alleging that the other three candidates were Badars, a tribe not specified in Part VIII, Para 2 of the Constitution (Scheduled Tribes) Order, 1950. The successful candidate asserted that he was a Nayaka and the Nayakas were also called Badars. The High Court held that there was no Nayaka in the area and successful candidate was a Badar. This Court allowed the appeal and held that Nayakas were to be found not only in the districts of Mysore but also in Maharashtra and Rajasthan. "This tribal community was therefore wide-spread" and it was not possible to say that there was no Nayaka in the district to which the appellant belonged. A bare assertion by the election petitioner that the appellant was a Badar did not suffice to displace the acceptance of the nomination paper or the claim of the appellant that he was a Nayaka.

35. In the present case it is not the contention of the first respondent that he was a Patar-member of a tribe which is not Munda, but he was recognized as a Munda. His case was that in his tribe he was as a Munda Patars.

36. Attention may also be directed to a recent judgment of this Court in *Dina v. Narayan Singh & Another*. (C.A, No. 1628 of 1967, decided on May 21, 1968) In that case Dina Narayan Singh was declared elected to the Maharashtra Legislative Assembly from the Armori Scheduled Tribes constituency. His election was set aside on the application filed by the first respondent on the ground that Dina was not eligible to stand as a candidate from a reserved constituency. Dina had declared in his nomination paper that he was a member of the Gond (Mana) caste and the same was a Scheduled Tribe in Taluka Cadchiroli of District Chanda in that the Maharashtra State and being a Gond though styled as Mana he was entitled to the privileges given by the Constitution (Scheduled Castes) Order, 1950. This Court on a consideration of the evidence came to the conclusion that there was no sub-tribe of Maratha Manas in the Gonds. It was found that the customs, manners, forms of

worship and dress of the members of the Maratha Mana community were all different from the customs, manners, form of worship and dress of the Gonds. In that view the Court held that Mana community amongst the Marathas could not be regarded as Gond and the appellant was not entitled to stand for election as Gond. The decision clearly decides that the name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Order issued by the President, it may be shown that the name included in the Order is a general name applicable to sub-tribes.

37. The appeal fails and is dismissed with costs.

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