

Dadaji Alias Dina

Vs

Sukhdeobabu and Others

Civil Appeal No. 2229 of 1978

(V.D. Tulzapurkar, E.S. Venkataramiah JJ)

07.11.1979

JUDGMENT

VENKATARAMIAH, J. –

1. This appeal is filed under Section 116-A of the Representation of the People Act, 1951 (Act No. 43 of 1951) (hereinafter referred to as 'the Act') against the judgment of the High Court of Bombay (Nagpur Bench) in Election Petition No. 2 of 1978 by which the election of the appellant to the Maharashtra Legislative Assembly from the Armori Constituency (NO. 151) in Chandrapur District at the general election held in February, 1978 was set aside. The Armori Constituency was reserved for Scheduled Tribes. The appellant and respondents 1 to 4 were the candidates at the election. As the appellant secured the highest number of votes, he was declared as having been elected by the Returning Officer. In his nomination paper, the appellant declared that he belonged to 'Mana' community. Respondents 1, 2 and 4 declared themselves as belonging to 'Pradhan' community and respondent 3 claimed that he belonged to 'Raj Gond' community. After the result of the election was declared, respondent 1 who had secured who had secured the next highest number of votes at the election filed an election petition under Section 81 of the Act before the High Court of Bombay calling in question the election of the appellant. One of the grounds urged in the petition was that the appellant did not belong to any of the Scheduled Tribes specified in Part IX of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as 'the Order') as it stood at the time of the election and was not, therefore, qualified to be chosen to fill the seat which was reserved for Scheduled Tribes. It was alleged that the appellant belonged to Kshatriya Bidwaik Mana community and not to the 'Mana' community referred to in Entry 18 of Part IX of the Schedule to the Order. Respondent 1 also claimed that in the event of the appellant's election being declared as void, the Court should make a declaration that he (respondent 1) himself had been duly elected. The High Court upheld the contention of respondent 1 that the appellant did not belong to any of the Scheduled Tribes referred to in Part IX of the Schedule to the Order and declared his election as void. The other prayer made by respondent 1 that he should be declared as elected was, however, rejected. Aggrieved by the judgment of the High Court, the appellant has come up in appeal to his Court.

2. It should be mentioned at this stage that in the general election held in the year 1967, the appellant was declared as a successful candidate from the very same constituency which was a constituency reserved for Scheduled Tribes at that time also and that on an election petition being filed against the appellant, the High Court held that he did not belong to any of the Scheduled Tribes mentioned in the appropriate part of the Schedule to the Order at that time and therefore he was not qualified to contest the election. Accordingly his election was set aside. In the appeal filed before this Court, the judgment of the High Court was affirmed vide *Dina v. Narayan Singh* (38 ELR 212

(SC). In the course of the decision of this Court, it was held that the appellant belonged to 'Kshatriya Bidwaik Mana' community and not to the 'Mana' community referred to in Entry 12 of paragraph 5 of Part VII-A of the Schedule to the Order as it stood at the time of the said election for the reasons to which we shall advert hereafter.

3. In the election petition out of which this appeal arises, respondent 1 pleaded that the appellant belonged to 'Kshatriya Bidwaik Mana' community which was not a tribe mentioned in the Schedule to the Order and that the appellant was not a member of the 'Mana' community referred to in Entry 18 of Part IX of the Schedule to the Order as it stood at the time of the election in question. It was further alleged that the said 'Mana' community was a sub-tribe of Gond tribe and it had no relationship with the 'Kshatriya Bidwaik Mana' community to which the appellant belonged. The appellant denied the above allegation that there were two types of Manas, viz., (a) 'Mana' a sub-tribe of 'Gond' referred to in Entry 18 of Part IX of the Schedule to the Order, and (b) 'Kshatriya Bidwaik Mana' community. He further contended that the 'Mana' community to which he belonged had been included in that entry after the Schedule to the Order was amended by the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976.

4. In order to appreciate the rival contentions, it is necessary to make a brief survey of the law bearing on the question. Article 332 of the Constitution provides that seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam and Nagaland, in the Legislative Assembly of every State and that the number of seats for the Scheduled Castes and the Scheduled Tribes so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Schedule Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State. The expression 'Scheduled Tribes' with which we are concerned in this case is defined in clause (25) of Article 366 of the Constitution as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution. Article 342(1) of the Constitution 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 tribes or tribal communities or parts of or groups, within tribes or tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. It was in pursuance of this constitutional provision that the President issued the Order specifying the tribes or tribal communities which should be deemed to be Scheduled Tribes in relation to the several parts of India. Article 342(2) of the Constitution confers the power on the Parliament to modify by law the order issued under Article 342(1) by including in or excluding from the list of Scheduled Tribes specified therein any tribe or tribal community or part of or group within any tribe or tribal community. Section 5(a) of the Act provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless, in the case of a seat reserved for the Scheduled Tribes of the State he is a member of any of those tribes and is an elector for any Assembly constituency in that State. The area in which the appellant and respondent 1 to 4 are residing is situated within the area known as Gadchiroli and Sironcha Tahsils of the Chandrapur District of the State of Maharashtra. Prior to the amendment made in 1956, Entry 12 in the relevant part of the Schedule to the Order read as "Gond including Madia (Maria) and Mudia (Muria)". By the Scheduled Castes and Scheduled Tribes (Amendment) Act 63 of 1956, the said Entry 12 in paragraph (5) of Part VII-A of the Schedule to the Order which was as follows :

#12 Gond, including -Arakh or Arrakh Chota MariaAgaria Dandami MariaAsur

Dhuru or DhurwaBadi Maria or DhobaBada Maria DhuliaBhatola DorlaBhimma  
 GaikiBhuta, Koilabhuta Gatta or Gattior Koilabhuta GaitaBhar Gond  
 GowariBisonhorn Maria Hill MariaKendra MannewarKalanga Moghya or Mogia or  
 MonghyaKhatola Mudia (Muria)Koitar NagarchiKoya NagwanshiKhirwar or  
 Khirwara OjhaKucha Maria RajKuchaki Maria Sonjhari JharekaMadia (Maria)  
 Thatia or ThotyMana Wade Maria or Vade Maria##

5. The 30th tribe amongst the tribes included within the broad classification of 'Gond' tribe is 'Mana' tribe. As mentioned earlier, the claim of the appellant that he belonged to the said tribe in the previous case was negated. In August 1967, a Bill was introduced in the Lok Sabha proposing to amend the Schedule to the Order. By that Bill, it was proposed to substitute the Schedule to the Order as it stood then by a new Schedule Part VIII of the new Schedule related to Maharashtra. Entry 22 in the Part read as follows :

#----- Tribe Synonym Sub-tribe-----  
 ----- 1 2 3-----

22. Gond Koitur Arakh Koya Bada Madia Khirwar Bhatola Kucha Madia Chhota Madia Kuchaki  
 Madia Dandami Madia Machalir Madia Dhulia Mana Dhuru or Dhurwa Mannewar Dhoba Mudia  
 Dorla Nagarchi Gaiki Nagwanshi Gaita Naikpod Gatta or Gatti Ojha Kalanga Sonjhari Jharekha  
 Kendra Thatia or Thotia.-----##

6. In the proposed entry, 'Mana' community was shown as a sub-tribe of 'Gond' tribe. With the concurrence of the Rajya Sabha, the Bill was referred to a Joint Committee of the Parliament presided over by Shri Anil K. Chanda. The Report of the Joint Committee on the Bill was presented to the Lok Sabha on November 17, 1969. Insofar as the amendments proposed to the Schedule to the Order were concerned, the Joint Committee inter alia observed at paragraph 20(ii) thus :

The Committee feel that the proposal to specify the tribes, the synonyms and the sub-tribes in three separate columns will not be appropriate. As in the case of Scheduled Castes Orders, the Committee are of the view that it would be best to follow the wording of Article 342(1) of the Constitution and specify : "The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities". Each of the Scheduled Tribes Orders have been modified accordingly, and in the lists of Scheduled Tribes the main tribe name is written first followed by the synonyms and sub-tribes in alphabetical order.

7. The Joint Committee also recommended that the Mana sub-tribe referred to in the Bill should be excluded from the Schedule to the Order altogether. Thereafter the matter was again considered by the Parliament. In the Statement of Objects and Reasons, dated May 12, 1976 attached to the Bill, it was stated as follows :

Under the Scheduled Castes and Scheduled Tribe Orders some communities have been specified as Scheduled Castes or as Scheduled Tribes only in certain area of the State concerned and not in respect of the whole State. This has been causing difficulties to members of these communities in the areas where they have not been so specified. The present Bill generally seeks to remove these area restrictions. However, in cases where continuance of such restrictions were specifically recommended by the Joint Committee on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967, no change is being effected. The Committee had

also recommended exclusion of certain communities from the lists of Scheduled Castes and Scheduled Tribes. These exclusions are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that they were not found in a State are, however, being excluded if there were no returns in respect of these communities in the censuses of 1961 and 1971 ...

Thereafter the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976) was passed by the Parliament and it had come into force before the election in question was held. By the above Act, the entire Schedule to the Order as it stood prior to the amendment was substituted by a new Schedule consisting of XVI parts. Part IX of the new Schedule relates to the State of Maharashtra. Entry 18 of IX of the new Schedule corresponds to Entry 22 of the Bill referred to above and to Entry 12 in paragraph (5) of Part VII-A of the Order as it stood prior to the amendment. Entry 18 of Part IX of the Schedule to the Order after the amendment reads thus :

18. Gond; Raj Gond, Arakh, Arrakh, Agaria, Asur Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuta, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghnya, Mudia, Muria, Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria.

8. It is seen from the above entry that 'Mana' community is one of the communities included in the group of communities headed by Gond community. It appears that the recommendation of the Joint Committee to exclude it from the Schedule to the Order was not accepted by the Parliament.

9. If the Schedule to the Order had not undergone any change, there would not have been any room for argument that the appellant was a person belonging to a Scheduled Tribe eligible to contest as a candidate at an election to fill a seat from the reserved constituency as the question was concluded by the judgment of this Court in Dina case ((1899) AC 99, 105 106). Mr. M. N. Phadke, learned counsel for the appellant, however, argued that a comparison of Entry 12 as it stood prior to the amendment and Entry 18 as it stood on the date of the election in question would show that the Parliament while substituting the Schedule by a new Schedule by Act No. 108 of 1976 intended to make a departure from the old law and that every person who belonged to any 'Mana' community whether it had any affinity with Gond tribe or not would be entitled to the privilege of contesting at the election from the reserved constituency. The question for consideration before us therefore is whether by reason of the amendment made in the year 1976, persons belonging to the 'Mana' community to which the appellant belonged and which was not a Scheduled Tribe before such amendment can be considered as persons belonging to a Scheduled Tribe after such amendment.

10. Apart from Article 366(25) of the Constitution, there is no other definition of the expression "Scheduled Tribes". Scheduled Tribes are, therefore, only those which are deemed under Article 342 of the Constitution to be Scheduled Tribes. Hence in order to find out whether a community is a Scheduled Tribe or not, we have only to see the order which is made under Article 342 of the Constitution.

11. Mr. M. N. Phadke, learned counsel for the appellant drew the attention of the Court to the

omission of the word 'including' which according to him had been used in Entry 12 of the Schedule as it stood prior to the amendment to indicate that the communities mentioned after it were those having affinity with the 'Gond' tribe, from the new Entry 18 of Part IX of the Schedule to the Order and contended that the group of communities mentioned in Entry 18 need not necessarily be those having mutual affinity amongst them. On the above basis, it was urged on behalf of the appellant that a person belonging to any 'Mana' community should be treated as a person belonging to a Scheduled Tribe even though it had no affinity with the 'Gond' tribe. We find it difficult to agree with the submission made by him. Sometimes, the word 'including' is used in a definition to give an extended meaning also to the word defined. In *Dilworth v. Commissioner of Stamps* (1899 AC 99, 105, 106), Lord Watson observed that when the word 'include' is used in an interpretation clause to enlarge the meaning of words or phrases in a statute, "these words or phrases must be construed as comprehending, not only such things as they signify according to their import but also things which the interpretation clause declares that they shall include". Sometimes the word 'includes' is used as a synonym for 'means' and not as a word of extension, but limitation. This again is clear from the following observations of Lord Watson in the decision referred to above :

But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

12. In *South Gujarat Roofing Tile Manufacturers Association v. State of Gujarat* ((1977) 1 SCR 878 : (1976) 4 SCC 601 : 1977 SCC (L&S) 15), this Court interpreted the expression 'includes' found in Entry 22 which had been included in Part I of the Schedule to the Minimum Wages Act, 1948 by the Gujarat Government as being equivalent to 'means'. It is significant that even when it was possible to give an extended meaning to the expression 'Mana' appearing in Entry 12 in the Order before the amendment relying on the presence of the word 'including' in that entry, this Court gave a restricted meaning to it and held that only that 'Mana' community which had affinity with the Gond community could be considered as a Scheduled Tribe and that Kshatriya Bidwaik Mana community to which the appellant belonged could not be treated as a Scheduled Tribe. Now that the word 'including' has been omitted from the present Entry 18, is it open to construe it as including communities which had no affinity with the principal tribe 'Gond' mentioned first in that entry ? We do not think that it is possible to do so. Even though the proceedings of the Joint Committee cannot be relied upon for the purpose of construing the Order, they may be looked into to ascertain the circumstances in which the several communities were grouped under one entry or the other. The extract from the proceedings of the Joint Committee quoted above shows that in order to avoid confusion, the Committee recommended to follow the words in Article 342 of the Constitution and to enlist the "tribes or tribal communities or parts of, or groups within, tribes or tribal communities" under specific entries. It also recommended that the main tribe should be mentioned first in any entry followed by its synonyms and its sub-tribes in alphabetical order. Even without the aid of the proceedings of the Joint Committee, it is possible to arrive at the same conclusion in the context in which the word 'Mana' is found in Entry 18. Part IX of the Schedule to the Order as it stands today contains 47 entries. In certain entries only one community is mentioned and in certain others, two or more communities are mentioned. It is obvious that certain communities have been grouped together under a single entry in the light of Article 342 of the Constitution which parts of or groups within a tribal community also to be specified in the order issued thereunder. It is, therefore, reasonable to hold that the communities mentioned against any specific entry are those which have

mutual affinity amongst them.

13. It is also possible to hold that by replacing the Schedule to the Order by a new Schedule by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Parliament intended to treat persons belonging to 'Kshatriya Bidwaik Mana' community also as Schedule Tribes. If really that was the intention, the Parliament would have mentioned 'Mana' community under an independent entry. The inclusion of the 'Naikpod' community amongst the group of communities in Entry 18 for the first time also is of no special significance since the appellant has admitted in the course of his evidence that 'Naikpod' is also a tribe, found along with other Scheduled Tribes in that area and it is not stated that the said tribe has no affinity with them. It may have been omitted from the order earlier due to oversight.

14. A reading of the Schedule to the Order also shows that where there are two communities with the same name, one having affinity with a tribe and the other not having anything to do with such tribe and both are treated as Scheduled Tribes the community which has affinity with another tribe is shown along with it in the same group against a single entry and the other is shown against a different entry. This is illustrated by the inclusion of the 'Koya' community having affinity with 'Gonds' in Entry 18 and the 'Koya' community having no such affinity in Entry 33 of Part IX of the Schedule to the Order. If the Parliament intended to treat the appellant's community also as a Scheduled Tribe, it would have shown 'Mana' community under a separate entry. No such entry is found in the Schedule.

15. Some arguments were addressed at the Bar on the basis of the difference in the punctuation marks used in Entry 12 and in Entry 18. It is well known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious. Hence we do not feel that we should deal with it in greater detail having regard to the nature of this case.

16. We are, therefore, of the view that the 'Mana' community included in Entry 18 can only be that which has affinity with 'Gonds' and any other community which also bears the name 'Mana' but does not have any such affinity cannot be deemed to fall within the scope of 'Mana' in Entry 18.

17. The appellant has categorically admitted in the course of his evidence that there was no connection between his community and Gonds. His evidence is, "we have no concern with the Gond community also. The customs and traditions with regard to marriage of our community are different from those of the Gonds". He has stated in his deposition that "I have no concern whatsoever with Gonds. There are sub-castes amongst Gonds. Some of them are Arak, Gowari, Raj Gond, Bada Magia, Madia, Ojha and Wanjari. It is not true that Mana is a sub-caste of the Gonds. There is no community known as 'Gond'". That the appellant was a member of the 'Mana' community which has the qualification of 'Kshatriya' is established by his admission in his deposition that he was a member of the Kshatriya Mana Shikshana Sahayyak Mandal, Chandrapur. Although in another part of his statement of objections there are some contradictory statements, the following plea in para 9 of the said statement makes it obvious that there is community called Kshatriya Bidwaik Mana community :

9. As to Para 11 :- It is admitted that the respondent 1 was the Vice-President for some time and also an active worker of the Kshatriya Bidwaik Mana Shikshana Samstha. The object of the said institution was not limited to spread education amongst the boys belonging to Kshatriya Bidwaik Mana community, and it is denied that the said society has been founded in order to give educational facilities to the

students belonging to this community only.

18. In the appeal filed by the appellant where the question was whether he belonged to a Scheduled Tribe or not, this Court observed :

That there are sub-tribes amongst the Gonds is not denied. Names of some of those sub-tribes are included in Entry 12 of Item 5 of Part VII-A of the Schedule is also a matter which is beyond dispute. The customs, manners, form of worship, and dress of the members of the Maratha Mana community are all different from the customs, manners, form worship and dress of the Gonds. No rational explanation has been suggested why the Parliament should have, while including under Entry 12 several sub-tribes of Gonds, specified Mana under that entry, if Manas had no affinity at all with Gonds. The appellant was uncertain about the claim that he was making. In the nomination paper filed by him he claimed to be a Gond (Mana). His subsequent explanation that he did so because the rules so required cannot be accepted as true. He relied upon the status of a Mana in the belief that all Manas were intended to be given the benefit of the privileges conferred by the Scheduled Tribes Order. He described himself as a Gond (Mana). Realising thereafter that his community had no affinity with the Gonds he stated that he was not a Gond; that he had nothing to do with the Gonds, and that his community had also nothing to do with the Gonds. He rested his claim solely upon the description in Entry 12 in Item 5 of Part VII-A of the Schedule. But the form in which the entry is made prima facie indicates that in the view of the legislature, Mana was a sub-tribe of Gonds and a Mana who was a member of the sub-tribe of Gonds alone was entitled to the privileges conferred by the Schedule to the Scheduled Tribes Order.

We, therefore, agree with the High Court that the appellant, merely because he belonged to the Mana community amongst the Marathas, is not eligible to stand as a candidate for election to the Maharashtra Legislative Assembly from the reserved seat of the Armori constituency in Gadchiroli tahsil of Chanda District.

19. The position has not since changed even though the Schedule to the Order is substituted by a new Schedule. There has only been a rearrangement of the Schedule with slight modification which has no effect on the question at issue in this case.

20. The High Court was, therefore, right in rejecting the case of the appellant that he belonged to a Scheduled Tribe, and in setting aside his election to the Maharashtra Legislative Assembly.

21. In the result the appeal fails and is hereby dismissed with costs.

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