

Srish Kumar Choudhury

Vs

State of Tripura and Others

Civil Appeal No. 479 of 1986

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

23.02.1990

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by special leave calls in question the judgment of the Guwahati High Court dated March 18, 1985, dismissing the appellant's writ petition. The appellant is a resident of Tripura State. In his application in a representative capacity before the High Court he maintained that he belonged to the Laskar community which had always been treated in the erstwhile State of Tripura as a scheduled tribe and on that basis in the State records was included in the Deshi Tripura community long before integration of the Ruler's State of Tripura with the Union of India. Members of the laskar community freely enjoyed all the benefits available to members of the scheduled tribes until in 1976 the State Government decided to treat members of that community as not belonging to the scheduled tribes and issued instructions to the State authorities to implement the government decision. That led to the filing of the petition before the High Court. In the writ petition appellant prayed for appropriate directions to continue to treat the appellant and members of his community as belonging to the scheduled tribes and for a direction to the State Government to extend all the benefits admissible to members of the scheduled tribes to members of Laskar community. Before the High Court the respondents disputed the claim and maintained that the Laskar community was never included in the Scheduled Tribes Order and as such there was no question of exclusion from the list. A historical study of the claim would show that in the past Tripura/Tripuri/Tippera which have been included in the Presidential Notification never included the Laskar community. Tripuras were a Tibeto-Burman race akin to the Bhan tribe and Tipperas were divided into four groups, namely (i) Puran or original Tipperas (ii) Jamatias (iii) Noatias or Nutan Tripuras and (iv) Riangs, Respondents relied upon government records and official publications in support of the aforesaid stand.

2. Before the High Court two circulars of the erstwhile State of Tripura, one being of December 1930, and the other of February 1941, as also the census report of the ex-State of Tripura were produced in support of the claim advanced by the appellant. Several authorities of this Court were relied upon for finding out the scope of enquiry in a claim of this type and ultimately by the impugned judgment the High Court dismissed the writ petition but on the basis of the statement made by the advocate-General appearing for the State, it recorded.

"We keep on record the statement made by the learned Advocate-General, Tripura on instruction that as a result of the impugned Memorandum No. 18887-19077/TW/6-4 (L-D) dated April 28, 1979 the certificates already issued would be treated as infructuous prospectively and not retrospectively and those who have already

enjoyed the benefits by virtue of such scheduled tribe certificates they shall not be deprived of the benefits they have already enjoyed and the Memorandum shall be effective from its date prospectively insofar as the future benefits are concerned."

3. This appeal had come up for final hearing earlier and by a brief judgment reported in Sarish Chandra Choudhary v. State of Tripura a two-Judge bench recorded the following order : (SCC p. 464, para 2)

"The record before us shows that the people of the Laskar community have been treated as members of the scheduled tribes and there have been some letters from the Government of India to the State Government in support of that position it is however, a fact that there has been no clear inclusion of the community in an appropriate Presidential Order. The appellant has maintained that even in the absence of such a clear specification in a Presidential Order, as a sub-group under one of the notified categories, the appellant's community has been enjoying the privileges. We have been told by the learned counsel for the Union of India that the representation made by the appellant and members of his community for inclusion in the Presidential Order under Article 342 of the Constitution is being looked into and is being placed before the Parliamentary Committee in accordance with the prescribed procedure for a review of the position. He has assured us that the Government of India will take steps to finalise the matter at an early date and may in compliance with the procedure as prescribed, take a final decision. In case the community is not included in the Presidential Order, it would be open to the appellant to take such action as may be available in law."

4. The appellant waited for some time and approached the Government of India for quick action but when nothing happened, an application for directions was made in this Court. Several adjournments were taken but government would not take any decision. Ultimately by consent of parties, the order disposing of the appeal was recalled and the appeal was directed to be set down for re-hearing. That is how the appeal is not before us.

5. Articles, 341 and 342 of the Constitution deal with Scheduled Castes and Scheduled Tribes respectively and contain almost identical provision. We may extract Article 342 dealing with Scheduled Tribes :

"342 (1) The President may, with respect to any State or Union territory and where it is a State after consultation with the Government 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 this Constitutional 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 tribe 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."

6. Article 366 (25) defines 'Scheduled Tribes' to mean such tribes or tribal communities or parts or groups within such tribal communities as are deemed under Article 342 to be Scheduled Tribes for

the purposes of this Constitution. The Constitution (Scheduled Tribes) (Union Territories) Order, 1950 relating to Tripura included 19 tribes within the notification. Item 15, 16, 17 and 18 are relevant for our purpose and they were;

"15. Tripura or Tripuri, Tippera

16. Jamatia

17. Noatia

18. Riang."

7. Following the Reorganization Act (37 of 1956), the Ministry of Home Affairs on October 29, 1956, notified the list of scheduled castes and Scheduled tribes. In respect of the then Union territory of Tripura the same communities were relisted. Then came the North-Eastern Area (Reorganisation) Act (81 of 1971) which in the Fourth Schedule contained amendment of the Constitution (Scheduled Tribes) Order, 1950. Items 15 to 18 in the Schedule contained the same descriptions. The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, (108 of 1976) in relation to Tripura in the Second Schedule carried the same in Entries 7, 14, 16 and 18. It is, therefore, clear that in Tripura the scheduled tribes within the meaning of the definition given in Article 366 of the Constitution have been the following; 'Jamatia, Noatia, Riang and Tripura/Tripuri/Tippera' apart from 15 other tribes as specified. It is not necessary to refer to the 15 others inasmuch as it is the case of the appellant that Laskars are a part of the tribe named as Tripura, Tripuri or Tippera covered by Entry 18.

8. Before advertent to the evidence upon which the appellant relies in support of his stand, it is necessary that the scope of enquiry to be conducted in this regard by the Court which were have to be first referred to. A Constitution Bench in the Case of B. Basavalingappa v. D. Munichinnappa examined the provisions of the Article 341 which contained similar provisions for the scheduled castes with reference to an election dispute. Wanchoo. J. spoken for the Constitution Bench thus : (SCR pp. 381 - 20)

"Clause (1) provides that the President may with respect to any State after consultation with the Governor thereof. by public notification, specify the castes, races or tribes or parts of the groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be scheduled castes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular caste is a scheduled caste or not and only those castes can be scheduled castes which are notified in the Order made by the President under Article 341 after consultation with the Governor where it relates to such castes in a State, Clause (2) then provides that Parliament may by law include in or exclude from the list of scheduled castes specified in a notification issued under clause (1) any caste race or tribe or part of or group within any caste, race or tribe. The power was thus given to Parliament to modify the notification made by the President under clause (1). Further clause (2) goes on to provide that a notification issued under clause (1) shall not be varied by any subsequent notification, thus making the notification by the President final for all times except for notification by law as provided by clause (2). Clearly therefore Article 341 provides by law.. Therefore in view of this stringent provision of the Constitution with respect to a notification issued under clause (1) is not open

to anyone to include any caste as coming within the notification on the basis of the evidence - oral or documentary - If the caste in question does not find specific mention or the terms of the notification.

It may be accepted that it is not open to make any modification in the order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and therefore must be deemed to be included in caste A. It may also be accepted 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."

9. The factual dispute raised in the case before the Constitution Bench was whether Voddar caste was included in Bhovi caste which was one of the notified castes. The Constitution Bench dealt with the evidence and ultimately said : (SCR p. 322)

"In the circumstances therefore we agree with the High Court that respondent I though Voddar by caste belongs to the scheduled caste of Bhovi mentioned in the Order. We may again reappear that we have referred to the evidence in this case only because there was undoubtedly not caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out therefore which caste was meant by the word 'Bhovi' as used in the Order. But for this fact it would not have been open to any party to give evidence to the effect that.. caste A mentioned in the Order includes or was the same as caste B where caste. A does exist in the area to which the Order applies."

10. A similar dispute again came before a Constitution Bench in Bhaiyalal v. Harikishan Singh with reference to a scheduled tribe in an election dispute. Gajendragadkar, C. J. speaking for the court said; (SCR pp. 882-83)

"It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a castes, race or tribe, 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 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. In fact, it is well known that before a notification is issued under Article 341 (1), an elaborate enquiry is made and it is as a result of this enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State."

11. What we have extracted above clearly supports the view of the other Constitution Bench namely, the list is intended to be final.

12. We may now refer to a two Judge bench deviation in the case of Parsram v. Shivchand. Here again, the Scheduled Castes Order was in issue in an election dispute and the question for consideration was whether mochi was included in the notified caste of chamar. The court referred to both the Constitution Bench judgments and indicated : (SCC p. 24)

"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 at least meant the same caste although there 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 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."

13. In Kishorilal Hent v. Raja Ram Singh a two Judge bench was called upon to decide whether jatav caste not mentioned in the scheduled castes of Datta district of Madhya Pradesh in the Order was included in chamar caste. the Court indicated : (SCC p. 9 para 13)

"If the matter were res integra we would have felt a good deal of difficulty in reconciling with the constitutional provisions the scheme followed in the State and the Orders concerned by which some caste has been included in some districts of the same State and excluded in the other districts. This Court, however, has in Bhaiyalal v. Harikishan Singh made observations repelling the contention that under Article 341 of the Constitution the President was not authorised to limit the notification to parts of a State... In Bhaiyalal case the appellant's election had been challenged on the ground that he belonged to the Dohar caste which was not recognised as a scheduled caste for the district in question and so his declaration that he belonged to the chamar caste which was a scheduled caste was improperly and illegally accepted by the Returning Officer. It was held that the plea that though the appellant was not a chamar as such he could claim the same status by reason of the fact that he belonged Dohar caste which is a sub-caste of the chamar caste could not be accepted. An enquiry of that kind would not be permissible having regard to the provisions contained in Article 341 of the Constitution."

14. We may now refer to two separate judgments of this Court in the case of Dina v. Narayan Singh and Bhaiya Ram Munda v. Anirudh Pata. Both were rendered by a common bench of Shah (as he then was) and Bhargava JJ. In that first case the question for consideration was interpretation of Entry 12 in the Scheduled Tribe Order. The entry read : 'Gond including Mana'. The court interpreted that mana community was a substitute or gond and on a proper construction of the entry manas not being gonds were not intended to be included. The decision in that case is not relevant for our purpose.

15. In Bhaiya Ram case the specified in the Scheduled Tribes Order was munda. The respondent was a patar but he maintained that it was included in the notified tribe. The bench was of the view that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to mean though evidence could not be accepted for modifying the Order by including a new tribe. Since the respondents' case was the patars were munds, evidence could be given to show

that the entry 'munda' included 'patar'.

16. These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, therefore not open to the court to make any addition or subtraction from the Presidential Order.

17. The evidence in this case on which reliance has been placed in support of the claim that Laskars are included in the tribe described as 'Tripura/Tripuri/Tippera' mainly consists of two circulars of the erstwhile State of Tripura. Circular No. 9 is of December 1930. There is a narration therein to the following effect :

"In this State Tripura Sampradaya means the following five communities :

#1. Puratan Tripura2. Deshi Tripura (related to Laskar class)3. Noatia4. Jamatia5. Riang."##

18. In Circular No. 10 which is of the year 1941, it has been said;

"In this State Tripura - Kshatriya denotes the following classes :

#1. Puratan Tripura2. Deshi Tripura (related to Laskar class)3. Noatia4. Jamatia5. Riang."##

19. The latter document related to census operation in the State. From these two documents it is clear that Deshi Tripura covered the Laskar class while there was another class called 'Tripura/Tripuri/Tippera' which did not relate to Laskar class. The Presidential Order has admitted the three tribes of Noatia, Jamatia and Riang in terms but while dealing with the two classes of Puratan Tripura and Deshi Tripura covering the Laskar class, it has adopted the description of those three items without referring to Puratan or Deshi.

20. The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community, but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in the scheduled tribes is genuine and should, therefore, be entertained.

21. Reservation has become important in view of the increasing competition in society and that probably had led to the anxiety of the appellant and the people in his community to claim reservation. As pointed out by the Constitution Bench judgments which we have referred to above, the basis on which inclusion into or exclusion from the enumerated list made under Article 342 is contemplated is the changing economic, educational and other situation of the members of any particular tribe. Keeping that in view the State Government may initiate appropriate proposals for modification in case it is satisfied and after appropriate enquiry if the authorities are satisfied that the claim is genuine and tenable, amendment may be undertaken as provided by the Constitution.

22. This Court has indicated in some of the judgments referred to above that as a result of the

detailed enquiry made as to the economic status, the level of education and the necessity of protection, inclusion into or exclusion from the Order is made. The material relating to the Laskar tribe in 1930 or 1941 may not have been considered sufficient before the respective Orders were made for including the Laskars, said to have been covered by the description of the Deshi/Tripura. Therefore even if historically this tribe was covered by the general description of Tripura, that by itself may not justify its inclusion in the Order as a scheduled tribe. That is an additional feature which has weighed with us in taking our decision not to interfere in the matter.

23. The claim of the appellant is dismissed so far as this Court is concerned but the observations which we have made may be kept in view. There shall be no order for costs throughout.

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