

A. Chinnappa

Vs

V. Venkatamuni and Others

Civil Appeal No. 1261 of 1987

(K. Ramaswamy, S. P. Bharucha, K. S. paripoornan JJ)

14.03.1996

ORDER

1. The appellant had contested election from 72 Bethamangala Assembly Constituency of Karnataka State Legislature as reserved candidate. The appellant claimed the status of Mundala which is a recognised Scheduled Caste notified by the President of India in exercise of power under Article 341(1) of the Constitution. He contested the said election on that basis and stood elected. When an election petition was laid by the first respondent, the High Court found that the caste to which the appellant belongs is Mondy/Mondigaru. The High Court on the basis of evidence on record found that the appellant, in fact, belongs to Mondy/Mondigaru Caste which was not recognised as a Scheduled Caste in the Presidential notification. Therefore, the High Court declared by the impugned order dated 30-4-1987 passed in Election Petition No. 21 of 1985 that his election to the Assembly Constituency allotted to the Scheduled Caste was not valid in law. Thus this appeal.

2. The question before us is : whether the status of the appellant who is a Mondy/Mondigaru, can be considered as Mundala - a Scheduled Caste synonym, for the purpose of election to the Legislative Assembly? Article 341 reads thus :

"341. Scheduled Castes. - (1) 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 castes, races, or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes 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 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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

3. A reading thereof would clearly indicate that the President may, with respect to any State or Union Territory, after consultation with the Governor, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall, for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Under clause (2) thereof, Parliament has been empowered by law either to include in or exclude from the list of Scheduled Castes specified by the President under clause (1) of Article 341, any caste, race or tribe or part of or group within any caste, race or tribe. Once Parliament by law includes in or excludes from any race, caste, tribe, parts of or groups within any caste, race or tribes, the President thereafter shall have no power to vary by any subsequent notification the said

caste, race, tribe or part of or group within any caste, race or tribe. Thus it could be seen that since the caste Mondy/Mondigaru does not admittedly find place in the notification issued by the President or as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the status of the appellant as Mundala cannot be considered to be synonymous with or equivalent to Mondy/Mondigaru as claimed by the appellant. This Court in a recent judgment in Nityanand Sharma v. State of Bihar [(1996) 3 SCC 576 : JT (1996) 2 SC 117] has considered the scope of the power of the court to declare the entries of the Presidential notification under Article 342(1) and had held that no court has power to give such a declaration. The limited scope of enquiry is whether the caste claimed by the candidates finds place in the notification of the President as amended under the Act. The High Court, therefore, was right in its conclusion that the appellant cannot have the status of Scheduled Caste to contest the said Legislative Assembly election. The learned counsel for the appellant has relied upon Revenue Officer v. Prafulla Kumar Pati [(1990) 2 SCC 162]. In that case, admittedly Dhoba is one of the castes recognised by the President as Scheduled Caste in relation to the State of Orissa. Since the appellant therein claimed the status as a Rajaka in one of the sale deeds, it was sought to deny him the benefits conferred on Scheduled Castes. This Court had held that since the President has notified Dhoba to be Scheduled Caste in relation to the State of Orissa, merely because he described himself to be a Rajaka in one of the sale deeds, his status as a Scheduled Caste is not taken away by such description. The ratio therein has no application to the facts in this case.

4. The appeal is dismissed accordingly. No costs.