Vinay Prakash and Others

Vs

State of Bihar and Others

SLP (C) No. 2714 of 1997

(G. T. Nanavati, K. Ramaswamy JJ)

17.02.1997

ORDER

1. This is the fourth attempt made by the Lohar community to get into the status of Lohara. Lohara are, admittedly, blacksmiths, a backward community in the State of Bihar. Loharas are Scheduled Tries in the State of Bihar.

2. This special leave petition arises from the judgment and order of the Patna High Court, made on 10-10-1996 in LPA No. 831 of 1996. The President of India, in exercise of the power under Article 342(1) of the Constitution read with Article 366(25), notified the Scheduled Tribes for the State of Bihar thus :

> "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 this Constitution."

Thereafter, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 came to be made adding to or deleting from the lists certain castes. In Entry 22 of the entries in relation to the State of Bihar, Lohara was wrongly translated as Lohra and the same was published in the State Gazette notification. That came to be rectified by a notification published by the Government on 6-1-1995. In the meanwhile, there was a spate of litigation after the 1976 Amendment Act and the Lohars - a backward class - as stated earlier, claimed the status of Scheduled Tribes. When the said claims for social status of Scheduled Tribes came to be rejected, the petitioners approached the courts. While the desired social status certificates were granted by the High Court in some cases, the same was refused in others. When the matter had come up for the first time, before a Bench of, three Judges of this Court, to which one of us (K. Ramaswamy, J.) was a member, in Shambhoo Nath v. Union of India [CA No. 4631 of 1990 decided on 15-09-1990], it was wrongly conceded by the counsel appearing for the Union of India that they were entitled to the status of Scheduled Tribes. On that premise, the order of the Administrative Tribunal was set aside and direction was given to issue the certificate of Scheduled Tribes. Since the social status certificates were not issued the certificates were not issued despite direction in that regard, a writ petition under Article 32 was again filed in this Court seeking a writ of mandamus directing all the authorities in the State to issue certificates in the light of the judgment passed by this Court in Shambhoo Nath Case [CA No. 4631 of 1990 decided on 15-09-1990]. That writ petition was also dismissed by a Bench of three Judges, to which one of, us (K. Ramaswamy, J.) was a member.

3. Later, the matter was considered in extenso in Nityanand Sharma v. State of Bihar [(1996) 3 SCC 576] wherein, considering the entire history of the Lohars and Loharas, this Court has held in paras

10, 11 and 12 that Loharas being backward class, they cannot claim the status as Lohara, which is a Scheduled Tribe and, therefore, the entitlement on that basis is unconstitutional and it was a retrograde step to get into the status of Scheduled Tribes to snatch the benefits made for the Scheduled Tribes. It was further held that all those judgments in which the High Court had taken contra view are not good law. Consequently, they filed yet another writ petition in the High Court claiming, on the basis of the orders issued by competent authorities, the status of Lohara. In the impugned order, the Division Bench has held that in the light of the law laid by this Court Nityanand Sharma [(1996) 3 SCC 576], it was not open to the High Court to go into that question and accordingly it dismissed the writ petition. The LPA filed in that behalf also came to be dismissed. Thus, this special leave petition.

4. Shri Rajeev Dhavan, learned Senior Counsel appearing for the petitioners, has contended that this Court in B. Basavalingappa v. D. Munichinnappa [(1965) 1 SCR 316 : AIR 1965 SC 1269] (SCR at p. 322), Srish Kumar Choudhury v. State of Tripura [1990 Supp SCC 220] (SCC pp. 226 & 228, paras 12 and 20) and Palghat Jilla Thandan Samudhaya Samrakshna Samithi v. State of Kerala [(1994) 1 SCC 359] (SCC at p. 364, paras 14 and 19) had considered and held that it would not be open to the Court to enter into an enquiry as to whether a particular caste or tribe is a Scheduled Tribe for finding out whether they are entitled to the benefit of the status conferred by the notification issued by the President of India under Articles 341 and 342 of the Constitution, as the case may be; therefore, the view of this Court mentioned in Nityanand Sharma [(1996) 3 SCC 576] is per incuriam. We find no force in the contention. We make it clear that in the English version of the Presidential notification Lohars is not shown as a Scheduled Tribe. But in the translated Hindi version, it found place in the notification. It was a wrong translation. This aspect was examined in detail in Nityanand Sharma case [(1996) 3 SCC 576].

5. It is seen that in Basavalingappa case [(1965) 1 SCR 316 : AIR 1965 SC 1269] the question was whether "Bhovi" caste was a Scheduled Caste within meaning of Presidential notification for the purpose of finding whether the respondent therein was a Scheduled Caste candidate for the purpose of contesting the elections as a reserved candidate. Admittedly, by proceeding the notification, Bhovi caste was a Scheduled Caste and under those circumstances, this Court had gone into that question. This Court had referred to a two-Judge Bench decision in Parsram v. Shivchand [(1969) 1 SCC 20] and Srish Kumar Choudhury case [1990 Supp SCC 220] wherein this Court had held that it would not be open to the Court to go into the question whether "mochi" was included in the notified caste of chamar. Equally, in Palghat case [(1994) 1 SCC 359] the question was whether Thandans or Ezhavas in Malabar District, which was part of the Madras Province, were members of Scheduled Castes or Backward Classes and in view of the admissions made by the Government in paras 14 and 19, this Court had held that it was not open to the Government to go into that question until it was suitably modified by a Presidential notification. All these cases have been considered in one judgment or the other by this Court in particular in Nityanand Sharma case [(1996) 3 SCC 576].

6. The question is whether a person, who is not a Scheduled Tribe under the Presidential notification, is entitled to get the status of a Scheduled Tribe. It is already held that though the English version of the Presidential notification clearly mentions "Lohara", there was no mention of Lohar. But while translating it, Lohara were also wrongly included as was pointed out by this Court in Nityanand Sharma case [(1996) 3 SCC 576]. It would, thus, be seen that the Presidential notification was unequivocal and, therefore, Lohars were not Scheduled Tribes within the meaning of the definition of "Scheduled Tribes" under Article 366(25) read with the notification issued by the President of India under Article 342(1) of the Constitution and, therefore, this Court had pointed out that they are not entitled to the status of Scheduled Tribes. It is clear that if a Presidential

notification does contain any specific class or tribe or a part thereof, then, as held by this Court, it would be for Parliament to make necessary amendments in Article 342(2) of the Constitution and it is not for the executive Government but for the Court to interpret the rules and construe as to whether a particular caste or a tribe or a part or section thereof is entitled to claim the status of Scheduled Tribes. Under these circumstances, we think that the decision in Nityanand Sharma [(1996) 3 SCC 576] does not require any reconsideration; so also other decisions referred to therein except the Palghat case [(1994) 1 SCC 359], which was later considered in another judgment. Under these circumstances, we do not think that there is any illegality in the decision rendered by the Division Bench of the High Court warranting interference.

7. It is then contended that the doctrine of prospective application of the judgment in Nityanand Sharma case [(1996) 3 SCC 576] may be applied. In support thereof, the learned counsel relied upon two judgments of this Court in State of Karnataka v. Kumari Gowri Narayana Ambiga [1995 Supp (2) SCC 560 : 1995 SCC (L&S) 887 : (1995) 30 ATC 37] and Govt. of A.P. v. Bala Musalaiah [(1995) 1 SCC 184 : 1995 SCC (L&S) 275]. We are afraid, we cannot accede to the contention of the learned counsel. This is a case where the respondents were not entitled, from the inception, to the social status of Scheduled Tribes. Since the entry gained by them was based on wrong translation made by the Department in the notification and the order was obtained on that basis. The same cannot be made the basis of grant of the status of Scheduled Tribes. We cannot allow perpetration of the illegality since under the Constitution they are not at all entitled to the status of Scheduled Tribes. Under these circumstances, the above two judgments have no application to the facts in this case.

8. The special leave petition is accordingly dismissed.