SUPREME COURT OF INDIA

State of Orissa

Vs.

Dasarathi Meher

C.A.No.7362 of 2013

(Madan B.Lokur and Deepak Gupta,JJ.,)

27.09.2018

JUDGMENT

Deepak Gupta,J.,

1. Leave granted in SLP (C) No. 13172 of 2015, SLP (C) No. 13169 of 2015 and SLP (C) No. 13171 of 2015.

2. Whether the tribe mentioned as "Kulis" in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 in Schedule II in Part XII at Item No. 42 includes persons belonging to the "Kuli" community, is the issue which needs to be decided in the present group of cases.

3. Article 342 of the Constitution of India reads as follows:

> "342. Scheduled Tribes.- (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes 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 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."

4. It would be pertinent to mention that the aforesaid article is almost identical to Article 341 relating to Scheduled Castes. The only difference being that Article 341 deals with "castes, races or tribes or parts of or groups within castes, races or tribes" whereas Article 342 deals only with "tribes or tribal communities or parts of or groups within tribes or tribal

communities". This small difference will not have any effect while interpreting the two articles on the facts of these cases.

5. The stand of the appellant, the State of Odisha (formerly known as 'Orissa') and the intervenor is that since in the Scheduled Castes and Scheduled Tribes Order, the tribe which has been declared to be a Scheduled Tribe is "Kulis", the members of the "Kuli" community cannot take benefit of being declared as Scheduled Tribes. It is further submitted that no court including this Court has the power to change or modify what is stated in the Presidential Order and later in the Act of Parliament and, therefore, the High Court erred in holding that "Kulis" would include "Kuli".

6. Before dealing with the factual aspect of the matter it would be pertinent to reiterate the legal position and the limits of the power of the court while dealing with these issues. A bare perusal of clause (1) of Article 342 of the Constitution clearly shows that the President with respect to any State, after consultation with the Governor thereof, may by public notification specify the tribes or tribal communities or parts of or groups thereof, which shall for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to that State. After the President issues an Order under Article 341 or 342, the said Order cannot be amended, modified, added to or any caste or tribe deleted therefrom by the State or by any court or tribunal. It is only the Parliament, which can enact a law to include or exclude from the lists of Scheduled Castes or Scheduled Tribes any caste, race or tribe. The power to alter the Presidential Order lies only with Parliament and no other authority. Therefore, the notification issued by the President is final for all purposes and for all times except if modified by a law made by Parliament.

7. These provisions have been considered in a number of cases. We need not refer to all, except three Constitution Bench judgments of this Court. The first Constitution Bench judgment was rendered in *B. Basavalingappa v. D. Munichinnappa*[1]. In this case the issue was whether a person belonging to the "Voddar" caste could claim that he belonged to the "Bhovi" caste which had been notified as a Scheduled Caste. This Court held that normally it is not open for any court or tribunal to go into this question or to take evidence that "Voddar" caste is the same as "Bhovi" caste. The Court held it to be a settled position of law that it is not open to any court or tribunal to make any modification in the Presidential Order by referring to evidence to show that though caste "A" alone is mentioned in the order, caste "B" is also part of caste "A" and, therefore, must be deemed to be included in caste "A". It was noted by this Court that wherever there is one caste or one tribe having more than one name then in the Presidential Order, the other name(s) is normally mentioned in brackets. Having held so, this Court, in the facts of the case, found that it was necessary to go into the question because it was not disputed that there was no caste known as "Bhovi" in the Mysore State before its reorganisation in 1956. Following observations of the Court are relevant:

> " The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re¬organisation of 1956 there was no caste known as Bhovi at all. The Order refers to a scheduled caste known as Bhovi in the Mysore State as it was before 1956 and therefore it must be

accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order, when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956 "

Thereafter, this Court referred to the material placed before it and came to the conclusion that "Bhovi" caste was earlier known as the "Voddar" caste. It appeared that at a Conference of the Voddar Caste, held in July, 1944, it was resolved that the name of that caste be changed from "Voddar" to "Bhovi". Eventually, the Government also accepted the said Resolution by passing an order. The matter does not end here. The Government Order directed that the community known as 'Vodda' would in future be called as 'Boyi' in all Government communications and records. This Court also considered the issue of change in spellings wherein 'Boyi' was mentioned in the Government Order but the caste declared to be a Scheduled Caste was "Bhovi". Furthermore, the Government Order refers to 'Vodda' and not to "Voddar". Dealing with the issue of different spellings the Constitution Bench held as follows:

" Here again there is force in the contention that where the same caste was spelt differently, the different spellings have been provided in the Order as illustrated already. But the same difficulty which faced us in considering the question whether Voddar caste was meant by the caste Bhovi included in the Order arises when we consider the difference in spellings, for it is not in dispute that there was no caste known as Bhovi in the Mysore State as it existed in 1950 when the Order was passed. As the President could not have included in the Order a non-existent caste it means the word 'Bhovi' relates to some caste in Mysore as it was before 1956 and we have therefore to establish the identity of that caste and that can only be done by evidence. In that connection the High Court has held that ever since the Order of 1946, the Voddar caste has been variously spelt as Boyi, Bovi and Bhovi in English, though the Kanada equivalent is one and the same. The High Court therefore has not attached any importance to the change in the English spelling in the peculiar circumstances of this case "

8. The second Constitution Bench judgment is in the case of *Bhaiya Lal v. Harikishan Singh*[2] . In this case the appellant claimed that he belonged to 'Dohar' caste, which was a sub-caste of 'Chamar' caste. The Constitution Bench held that an inquiry of such a kind was not permissible.

9. The third Constitution Bench judgment is in the case of the State of Maharashtra v. Milind . In this case the notified Scheduled Tribe was Halba/Halbi. The High Court, relying upon certain material held that "Halba-Koshti" was included in "Halba" or Halbi". This Court held that it was not permissible for the courts to do so. After discussing the entire law, this Court held as follows:

"36. In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub¬tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda v. Anirudh Patar and Dina v. Narain Singh did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

It would be pertinent to mention that in Milind's case (supra), the Constitution Bench reaffirmed the ratio of the earlier two Constitution Bench judgments.

10. It is thus obvious that the power of the Court is very limited and the Court cannot modify, alter, add to or subtract from the Presidential Order or the notification issued by Parliament. At the same time, the Court has to ensure that the order is read in such a manner that no caste or tribe, which is intended by President or by Parliament to be included, is actually excluded.

11. Mr. Shibashish Misra, learned counsel appearing for the State submits that in view of the judgment delivered in Milind's case (supra), no court or authority has any jurisdiction to add any tribe or caste. According to him, since the tribe, which has been declared to be a Scheduled Tribe is "Kulis", the courts cannot give an interpretation that persons belonging to "Kuli" community are also entitled to the benefit of being declared Scheduled Tribe. On the other hand Mr. V. Giri, learned senior counsel submits that it is but obvious that "Kulis" is only a plural for "Kuli" and not a separate caste.

12. Coming to the facts of the present case, the first Order which has been placed on record is the Constitution (Scheduled Tribes) Order, 1950 and in Part VI the Schedule, dealing with the State of Odisha at Item No. 31, the tribe "Kulis" has been declared to be a Scheduled Tribe for the entire State of Odisha. The next relevant document is the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 and in Part IX of Schedule I, dealing with the State of Odisha, "Kuli" has been declared to be a Scheduled Caste in Sambalpur district only. In the very same order in Part IX of Schedule III, "Kulis" continued to be declared to be a Scheduled Tribe throughout the State of Odisha.

13. The Parliament replaced the Presidential Orders by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. This Act was enacted for the purposes of inclusion and exclusion from the lists of Scheduled Castes and Scheduled Tribes of certain castes and tribes. The Presidential Orders were replaced by this Act. In Schedule I at Part XIII dealing with the State of Odisha, the caste "Kuli" no longer finds mention. In Schedule II at Part XII dealing with the Scheduled Tribes, the tribe "Kulis" is notified to be a Scheduled Tribe for the whole of the State of Odisha. The Hindi version of this Order describes the tribe "Kuli" (3t) as a Scheduled Tribe.

14. Persons belonging to the "Kuli" community have for long been claiming that they are part of the "Kulis" tribe and the High Court of Odisha has always held that the term "Kulis" is nothing but a plural for the term "Kuli" and has consistently held that "Kuli" are part and parcel of "Kulis" tribe. The first judgment in this regard was delivered in Sebaram Meher v. The State of Orissa . A Division Bench of the High Court held that there is no difference between the terms "Kuli" and "Kulis" because it was not disputed that there is no separate community known as "Kulis" in the State of Odisha. This view was followed in a large number of judgments including the judgment under appeal. The State of Odisha did not challenge the earlier judgments. Those judgments became binding as far as the State of Odisha is concerned.

15. Mr. Misra submits that since those judgments were rendered before the Constitution Bench judgment in Milind's case (supra), they were not challenged by the State of Odisha. This submission is wholly without merit. In Milind's case (supra) this Court has only reiterated what was said in Basavalingappa's case and in Bhaiya Lal's case (supra) and many other cases. Therefore, we cannot accept the explanation of the State in this regard.

16. We have even otherwise gone into the merits of the matter. Despite pointed queries put by the Court, learned counsel for the appellant and the intervenor could not place any material before us to show that there is a separate community by the name "Kulis". Time and again, the documents which were referred to were the documents relating to the period when "Kuli" were declared to be Scheduled Caste in the district Sambalpur whereas "Kulis" were declared to be a tribe in the entire State. The documents referred to by both the parties which are more in the nature of reports, indicate that "Kuli" is a community of weavers who were earlier forest dwellers. This community is engaged in the weaving of very coarse type of cloth. In none of the documents could we find any material to show that "Kuli" or "Kulis"

are two different castes or tribes dealing with some different vocations. In all the documents they have been dealt with synonymously.

17. In 1962, in a study conducted by the Scheduled Castes and Scheduled Tribes Research and Training Institute, the following remarks were made:

> "The Kuli As a Tribe - The Kuli are fully integrated with the caste hierarchy of the Hindu society. They accept the superiority of the Brahman, have functional relationship with other castes and have a rigidly fixed caste occupation. They worship the gods of the Hindus and have no separate gods or goddesses. They do not take such food and indulge in such practices which are prohibited for Hindus. Rather they behave like high castes in this respect. Conclusion - On the basis of the above findings the following conclusions may be drawn:-
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> (1) There is no reason to justify the Kuli being treated as a tribe.
>
> (2) The Kuli have the status of a Scheduled Caste but in that capacity they occupy a position superior to other Scheduled Castes. A slight stigma of untouchability is now attached to them but they are likely to be cleared up of this in near future.
>
> Recommendation - It is therefore recommended that the Kulis should be treated as a Scheduled Caste in both Sambalpur and Bolangir districts. They may be descheduled after a period of five years by which time they would have achieved a status equivalent to Other Backward Classes".
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> (emphasis supplied)

18. In 1979, in another study, the following observations were made:

> "The Kulis till now follow the traditional occupation of weaving. They have absolutely no other occupation except a few families who practice cultivation. 1% of the Kuli own land and in no case the holding is more than 2 acres. The Kulis have been hard hit because they specialize in coarse and inferior type of clothing which is generally used by the poorer section. Moreover, hand woven cloth has gradually been replaced by the mill made cloth. As a result they live on hand to mouth economy.
>
> It is therefore recommended that Kuli should neither be treated as Scheduled Caste nor as Scheduled Tribe in Orissa. However they should be provided with all the benefits by the Govt. as an economically backward class."
>
> (emphasis supplied)

19. In a communication sent to the Government in 1979 , it was mentioned that the Census of 1971 distinguishes the "Kuli" caste from "Kuli" tribe in different districts as follows;

Sl. No.	Distict	Population	
		Kuli Caste	Kuli Tribe
1.	Sambalpur	3554	936
2.	Balangir	522	657
3.	Phulbani	10	172
4.	Kalahandi	-	2
5.	Ganjam	-	40
6.	Dhenkanal	-	19
7.	Mayurbhanj	-	37
8.	Sundargarh	-	29
Total		**4086**	**1892**

20. In 1981, a communication was sent by the Commissioner and Secretary of the Harijan and Tribal Welfare Department of the Government of Odisha to the Union of India, making some proposals on behalf of the State of Odisha for amendments to the list of Scheduled Castes and Scheduled Tribes. In respect of "Kulis", it was mentioned that they are weavers by profession, mainly found in Bolangir, Sambalpur and Phulbani districts. It was submitted that they do not possess tribal characteristics and, therefore, may be deleted from the list of Scheduled Castes and Scheduled Tribes.

21. Relying upon these documents, it is urged that the "Kulis" and the "Kuli" are separate and members of the "Kuli" community cannot be treated as "Kulis". We fail to understand how this can be deduced from the aforesaid documents. In the statement showing the population, both communities are described as "Kuli" but while describing the occupation, the members of the community are described as "Kulis" and it has been recommended that "Kuli" should neither be treated as Scheduled Caste nor as Scheduled Tribe. This shows that there was only one community known as "Kuli", which was treated as Scheduled Caste for

some time in the district of Sambalpur but was treated as Scheduled Tribe for the entire State of Odisha. In none of the documents placed before us by the State, there is any indication to show that there is a separate caste or tribe by the name "Kulis".

22. We may now refer to the 24th Report of the Commissioner for Scheduled Castes and Scheduled Tribes. In this Report, prepared in December, 1977, dealing with the State of Odisha, it has been observed as follows:

> " In case of Orissa, the Kuli community which was earlier declared as Scheduled Caste in Sambalpur district has been deleted from the list as Kulis are already declared as Scheduled Tribes throughout the State "

In this Report, it is clearly indicated that the "Kuli" community has been deleted from the list of Scheduled Castes in Sambalpur as "Kulis" are already declared as Scheduled Tribe throughout the State. This clearly indicates that the Commissioner was of the view that "Kuli" community which was one of the communities declared to be Scheduled Castes in Sambalpur district, would now fall in the category of Scheduled Tribe.

23. The State has failed to show that there is any community caste or tribe, known as "Kulis". The community is known as "Kuli". Further, it is apparent that the term "Kulis" used in the Order is in the nature of plural for "Kuli". This becomes even more apparent from the various documents referred to above wherein the terms "Kulis" and "Kuli" have been used interchangeably and though the caste or tribe has been described as "Kuli", the members of the community, when dealt with together, have been described as "Kulis". Furthermore, in the Hindi version of the Amendment Act of 1976, the Scheduled Tribe has been described as "Kuli" and not "Kulis".

24. In Basavalingappa's case, the Constitution Bench of this Court held that caste "Bhovi" includes people of the "Voddar" caste mainly on the ground that prior to reorganisation of the State of Mysore, there was no caste "Bhovi" and, therefore, the Presidential Order could not be set at naught by excluding what was intended to be included in the list of Scheduled Castes. The present case is very similar. As held above, the State has failed to place any material on record to show that there is any caste or tribe by the name "Kulis". It is, therefore, apparent that both in the Presidential Order and in the Act, the term "Kulis" was used as plural for the term "Kuli".

25. We are fully conscious of the limitations on the powers of this Court. We cannot add to alter or modify the notified list of Schedules Castes and Scheduled Tribes. We are also aware that we cannot take into consideration any evidence in this regard. At the same time, we are of the considered view that we cannot give such an interpretation to a Caste or Tribe mentioned in the list of notified Scheduled Castes or Scheduled Tribes which would have the effect of nullifying the intention of the Parliament. In the present case, earlier the President and later Parliament had included "Kulis" in the list of Scheduled Tribe. It has been found that there is no community by the name "Kulis" in the State of Odisha. The only community is "Kuli". If we do not include "Kuli" in "Kulis", the net result would be that we would be

deleting a Tribe from the list of Scheduled Tribes. This also no Court or Tribunal is entitled to. We have to read the entries in the list in a manner which is consistent with the intention of the Parliament. According to us, earlier the President and later Parliament while using the term "Kulis" only intended it to be used as plural for the word "Kuli". Any other interpretation would mean that nobody would be able to take benefit of belonging to "Kulis" tribe.

26. Taking all the above facts into consideration, in the peculiar facts and circumstances of the case, we are of the view that the term "Kulis" in the English version will include members of the "Kuli" community. The appeals are accordingly dismissed. Application for intervention is also dismissed. Pending application(s), if any, shall stand disposed of.

Judgment Referred.

[1]*(1965) 1 SCR 0316*
[2]*AIR 1965 SC 1557*
[3]*(2001) 1 SCC 0004*
[4]*(1970) 2 SCC 0825*
[5]*38 ELR 0212*
[6]*58 (1984) CLT 0562*