

Nityanand Sharma & Anr vs State Of Bihar & Ors on 2 February, 1996

Equivalent citations: 1996 SCC (3) 576, JT 1996 (2) 117, AIR 1996 SUPREME COURT 2306, 1996 (3) SCC 576, 1996 AIR SCW 782, 1996 LAB. I. C. 975, (1996) 2 SCR 1 (SC), (1996) 2 JT 117 (SC), (1996) 1 APLJ 48, 1996 (2) JT 117, 1996 (2) SCR 1, 1996 (1) UJ (SC) 604, 1996 UJ(SC) 1 604, (1997) 95 ELT 182, (1996) 2 BLJ 521, (1996) 2 SCT 238, (1996) 1 SERVLR 765, (1996) 2 BLJ 537, (1996) 2 SCJ 273, (1996) 2 PAT LJR 37

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria, S.B Majmudar

PETITIONER:
NITYANAND SHARMA & ANR.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 02/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (3) 576 JT 1996 (2) 117
1996 SCALE (1)743

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

Leave granted.

Short but an important question of constitutional law of the power of the Court to declare a particular tribe to be Scheduled Tribe under Scheduled Castes and Scheduled Tribes Order, 1950 as amended by Scheduled Castes and Scheduled Tribes Orders (Amendment Act), 1976 (for short, 'the Act') is the primary question.

The appellants, Assistant Teachers in the service of the State of Bihar belonging to Lohar caste, claimed the status as Scheduled Tribe under the Act and the order and sought promotion on that basis in the quota reserved for the Scheduled Tribes. When the request was not acceded to, the appellants had filed CWJC No.10593/92. The High Court by impugned order dated August 12, 1993, dismissed the same.

Appellants' case is founded on two-fold basis, firstly, Lohar community was included in the Schedule under the Act as reflected in the Hindi version of the order and that thereby they are entitled to be recognized as Scheduled Tribes. Secondly, it is contended that when similar claim was relied on by one Shambhu Nath and was rejected by CAT, this Court in Shambhu Nath vs. State of Bihar (C.A. No.4631 of 1990) by order dated September 15, 1990 had held that Lohar community is a Scheduled Tribe under the Act. This was followed in another SLP @ CWJC No.1034 of 1991 dated September 21, 1992. The Division Bench of the High Court in the above writ petition held Lohar community as Scheduled Tribe. This was upheld by this Court. In the latter case also it had concluded that Lohar is a Scheduled Tribe community and that, therefore, it is entitled to the same status. In yet another writ petition CWJC No.3390/92 by order dated September 20, 1993, another Division Bench of that High Court also held that Lohars belong to Scheduled Tribes. It is contended that the dismissal of the writ petition by the High Court, therefore, is wrong in law. The notification in Hindi version must be enforced as their constitutional right is grossly violated.

When the matter had come up on Monday, the 15th January, 1996 alongwith SLP (C) Nos.23681-783 of 1995 and another one, the counsel stated that the other case was not pressed and thus was dismissed. In the above SLP No.1569 of 1994, since notice was issued by one of us (Pattanaik, j.) who was a member of the High Court Bench, as the then Chief Justice of that High Court, the counsel for the respondent sought for posting of the matter before appropriate Bench and thus the matter was posted before a Bench of which Pattanaik, J was not a member. At the request of parties this case was posted before the Bench of three Judges. Thus the matter has come up before us. When the case was called, the counsel sought permission for withdrawing the S.L.P. and when it was refused the counsel argued the case. Shri Dwivedi, the learned counsel, contended, firstly, that when there is a conflict of decisions between two co-ordinate Division Benches of the High Court, the Division Bench, in this case, should have referred the cases to a larger Bench and that, therefore, the decision of the High Court was bad in law. That controversy may be relevant in that court but as far as this Court is concerned, the case has to be dealt with on merits. He then contended that Lohar are Scheduled Tribes as recognized by other Division Benches of the High Court and that was approved by this Court in Shambhu Nath's case and another case. Therefore, Lohars now stand recognized as Scheduled Tribes. The Division Bench of the High Court in this case, therefore, was not right in holding that they are not Scheduled Tribes. He also contended that

when the Hindi version of the Schedule mentions Lohar as Scheduled Tribes, they are entitled to the declaration from the Court and a mandamus should have been issued to the authorities to consider their status as Scheduled Tribes for the purpose of promotion as Head Masters.

Shri B.B. Singh, learned counsel for the State, resisted the contention. He contended that there is a consistent view of the State High Court that Lohars are Blacksmiths-Other backward Classes (for short, 'O.B.Cs.') in the State of Bihar. They are not Scheduled Tribes. The Act mentions Lohara/Lohra as a Scheduled Tribes; Lohar is not a Scheduled Tribe, therefore, they are not entitled to the status as Scheduled Tribe. In West Bengal, the same tribes, i.e., Lohara/Lohra are shown as Scheduled Tribe in the Schedule under the Act both in English version and Hindi version. English version relating to the Schedule for Bihar though correctly reflects these two communities as Tribes, Hindi version does contain description 'Lohar' but it is only a wrong translation. The Court can take judicial notice of English Version and have it correctly interpreted by treating Hindi version as incorrect translation. Therefore, the High Court rightly did not accept the status of the appellants as Scheduled Tribes.

In view of the respective contentions, the question that arises for consideration is: whether the Court can give declaration of the social status as a Tribe or declare Lohars as Scheduled Tribes in the Act and the Schedule of the Act? Clause (24) of Article 366 defines "Scheduled Castes" and clause (25) of Article 366 defines "Scheduled Tribes". The latter means "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" (Emphasis supplied). Article 341(1) empowers the President, in consultation with the Governor of the concerned State, to specify Scheduled Castes by public notification. Equally, 342(1) empowers the President "with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification to 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". Article 342(2) empowers the Parliament, by law, to 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. In other words, it is the constitutional mandate that the tribes or tribal communities or parts of or groups within such tribes or tribal communities specified by the President, after consultation with the Governor in the public notification, will be Scheduled Tribes subject to the law made by the Parliament alone, which may, by law, include in or exclude from the list of Scheduled Tribes specified by the President. Thereafter, it cannot be varied except by Parliament. The specification is for the purpose of the Constitution.

Constitutional rights given in Part III and Part IV of the Constitution are relating to election to the Parliament or the State Legislature. Section 2(f) of the Act defines "Scheduled Tribe Order". It means "the Constitution (Andaman & Nicobar Islands) Scheduled Tribe Order, 1959 made by the President under Article 342 of the Constitution". Section 3 deals with amendment of the Scheduled Castes Order and Section 4 deals with amendment of Scheduled Tribe Order. The Scheduled Tribe Orders are amended in the manner and to the extent specified in the Second Schedule. First

Schedule relates to Scheduled Castes and Second Schedule relates to Scheduled Tribes.

Scheduled Tribe specified in the Order is in relation to a State or to a District or other territorial division type of and shall be construed as a reference to the State, District or other territorial division in that particular State as constituted on the first day of May 1976. The substituted schedule in relation to Bihar is contained in Part III. It consists of 30 Scheduled Tribes. Item No.22 specifies (1) Lohara/Lohra. Similarly in relation to West Bengal in Part XVI Item No.24 repeats the same tribes, namely, (1) Lohara/Lohra to be Scheduled Tribes. In Hindi version, as placed before us, relating to the State of West Bengal, is found the same specification. But with regard to Bihar State, Hindi version contains in place of Lohara, Lohar. The silibet 'a' is omitted. The title to the Schedule of Hindi version itself clearly mentions "translated version". As stated earlier, in English version, there is no mention of Lohar and Lohara/Lohra only are the specified Scheduled Tribes.

In 'Tribes and Castes of Bengal' written by renowned sociologist, H.S. Hisley in Volume II, is found the description of Lohar as Blacksmith of Bihar, Chota Nagpur and West Bengal. He mentions therein thus:

"Lohar, as sub-castes of Barhi in Bihar, only work in iron. They are, however, distinct from, and do not inter marry with the Lohra caste. The latter are probably Dravidian descent, while former appear to be an occupational group.

Lohar, a synonym for Kamar in Behar; a mul or section of the Naomulia or Majraut sub-caste of Goalas in Behar; a section of Kamis in Darjeeling."

So far as "Lohars of Behar" are concerned, the author says:-

"In Behar the caste works as blacksmiths and carpenters while many have taken to cultivation. They buy their material in the form of pigs or bars of iron. Iron smelting is confined to the Lohars of Chota Nagpurs and is supposed to be a much less respectable form of industry than working up iron which other people have smelted. In the smelted. In the Santhal Parganas Lohars often cultivate themselves while the women of the household labour at the....."

The other sub-castes of 'Lohra' and 'Loharas' have been stated by the author as follows:-

"Lohara, a sept of Mundas in Chota Nagpur. Lohar Agaria, a sub-tribe of Agarias in Chota Nagpur. Loharatengi, section of Rajwars in Western, Bengal. Loharbans, iron a totemistic sept of Chicks; a section of Gasis in Chota Nagpur. Lohra, a synonym for Asura and Lohar.

Lohra, Asur, a sub-tribe of Asuras in Chota Nagpur."

'Lohra' or 'Loharas' are thus different from 'Lohar' in Bihar as 'Lohars', as noticed hereinbefore are ranked with 'Koiris' and 'Kurmis' whereas 'Lohra' or 'Loharas' are merely sub-castes, a sept of

Mundas in Chota Nagpur or sub- tribes of Asurs who are Scheduled Tribes.

According to Hisley, Lohars are large and heterogeneous aggregate comprising members of the several different tribes and castes. who in different parts of the country took up the profession of working in iron. Of the various sub- castes... the Kanaujia claim to be the highest in rank, and they alone have a well marked set of exogamous sections. They regard Vishwani as their legendary ancestors, and worship him as the trolary deity of their cracts. The Magahaiya seems to be the indigenous Lohars of Bihar, or opposed to the Kanaujia and Motiniya, who profess to have come in turn from the North-West Provinces. The Kamia Lohars found in Champaran have immigrated from Nepal and are regarded as ceremonially unclean... The Hanhhum Lohars acknowledge three sub-caste-Lohar Manjhi, Danda Manjhi and Begdi Lohar, names which suggest a connection with the Begdi castes. Lastly, in Lohardagga we have the Sed-Lohars, claiming to be immigrant Hindus; the Manjha Turiyas who may well be a branch of the Turi caste; and the Munda Lohars who are certainly Mundas. In Andhra Pradesh, Blacksmiths are known as Kammara, who work on preparing iron articles for agricultural operations and Kamsalis prepare gold ornaments. They are O.B.Cs. Their names are different from region to region. It would thus be clear that Lohars are Blacksmiths, while Loharas/Lohra are Scheduled Tribes.

The question then is: whether Lohars could be considered by the Court as synonyms of Loharas or Lohras? This question is no longer res integra. In *Bhaiyalal v. Hari Kishan Singh* [(1965) 2 SCR 877]. a Constitution Bench of this court had considered in an election petition whether Dadar caste was a Scheduled Caste. It held that the President in specifying a caste, race, or tribe has expressly been authorised to limit the notification to parts of or groups within the caste, race or tribes. It must mean that after examining the social and educational backwardness of a caste, race or a tribe, the President may come to the conclusion that not the whole caste, race or tribe, but parts of or groups within them should be specified as Scheduled Caste or Scheduled Tribe, The result of the specification is conclusive. Notification issued under Article 341(1), after an elaborate enquiry in consultation with the Governor and reaching the conclusion specifying particular caste, race or tribe with reference to different areas in the State, is conclusive. The same view was reiterated in *B. Basavalingappa vs. D. Munichinnappa* [(1965) 1 SCR 316].

In *Dina vs. Nerayan Singh*, [(1968) 38 ELR 212], Dina declared in his nomination paper, as being a member of Gond (Mana) caste, a Scheduled Tribe in Godchiroli Taluka of Chand District in Maharashtra State. Evidence was led to show that he was Maratha Mana. Therefore, he was not Gond. The Court found that the customs, manners, forms of worship and dress of the members of Mana community are different from customs, manners, forms or worship and dress of Gonds. It was held that Manas are not Gonds and that, therefore, he was not a Scheduled Tribe under the Presidential Order entitled to get elected as a member of the Scheduled Tribes. In *Srish Kumar Choudhury vs. State of Tripura & Ors.* [1990 Supp. SCC 220] a Bench of 3 learned judges was called upon to consider whether Laskar community in State of Tripura is a Scheduled Tribe. In a representative petition under Article 226, they sought declaration that earlier to the Act and the Order, they were recognised as Scheduled Tribes by rulers of Tripura State and that they were Tripura/Tripuri/Trippera Laskar and that, therefore, they were entitled to the status as Scheduled Tribes. The High Court dismissed the writ petition. On appeal, this Court held that though evidence

may be admissible to verify the entries in the Presidential Order to find a caste/tribe included in a particular tribe or caste, tribal communities, the admissibility of the evidence is confined within the limitations enacted in the order. It is not, however, open to the Court to make any addition or subtraction from the Presidential Order. Laskars, therefore, as a community cannot be included as Scheduled Tribes. In Kumnari Madhuri Patel & Ors vs. Addl. Commissioner, Tribal Development & Ors. [(1994) 6 SCC 241], a Bench of two Judges, to which one of us (K. Ramaswamy, J.) was a member, had to consider whether Kolis, a Backward Class in Maharashtra would be declared as Mahadeo Koli, a Scheduled Tribe in Maharashtra. Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernized and progressed but they would not be oblivious or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe. The tribe or tribal communities, parts of or groups thereof have their peculiar traits. It was further held that Presidential declaration subject to amendment by Parliament is conclusive. No addition to it by way of declaration of castes, tribes or sub-caste, parts of or groups of tribes or tribal community is permissible. After an elaborate survey of the constitutional purpose and the relative caste structures, customs, marriages etc. it was held that Kolis are Backward Class and Mahadeo Koli are Scheduled Tribes. The appellants therein being OBCs were held not entitled to status as Scheduled Tribes.

It is for the Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste/tribe etc. It would thus be clear that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the concerned Schedule, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe.

In Mrs. Valsamma Paul vs. Cochin University Ors. (JT 1996 (1) SC 57), a Bench to which two of us (K. Ramaswamy and B.L. Hansaria, JJ.) were members have surveyed the retrograde attempts successively made by different communities in the country to wear the mask of status either of Scheduled Castes or Scheduled Tribes to secure constitutional benefits of reservations and other economic empowerments, intended for the Scheduled Castes and Scheduled Tribes meant for the latter to accord their economic, social and cultural advancement. In Andhra Pradesh High Court decisions noted in the judgment of the Bench, Jangama, backward class sought to be recognised as Scheduled Caste. Equally Holva tried to be Holuva, i.e., from O.B.C. to ST. Those attempts were judicially negated. This case is yet another instance, where Other Backward Class mass seeks to get the status of the Scheduled Tribe. It is a retrograde step to corner the benefits intended for Scheduled Tribes. In Shambhu Nath's case (supra) this Court, therefore, did not intend to lay down any law that Lohar are Scheduled Tribes. Unfortunately due to concession by the counsel for the

counsel for the Union, without due verification from English version, this Court accepted Hindi version placed before the Bench and held that they were included as Scheduled Tribes. There was an obvious mistake in accepting a mistaken fact. Therefore, this Court proceeded on that mistaken assumption without verification from the Act that Lohars are included in Part III of Second Schedule relating to the State of Bihar. Therein this Court stated thus:

"In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of the amendment of the List in 1976 we do not think that the Tribunal was justified in holding the view it has taken."

This Court, Therefore. Proceeded on the premise as admitted by the counsel that Lohar was included in the Act as Lohars in the Second Schedule as Scheduled Tribe. The counsel wants us to read the earlier sentence, viz. "We have looked into the record". In view of the factual quotation from the Act and the Second Schedule, as extracted in the earlier part of the judgment. the effect of the above sentence speaks for itself and seems to be otherwise. As a fact the bench proceeded on the basis of the concession of the Union counsel. It proved to be an obvious mistake and as a fact the translated Hindi copy was placed before the Court and the Court proceeded on that promise. The case establishes that the Court was misled by incorrect record. It proves how wrong it would be to proceed on the basis of statement by counsel who do not take full responsibility to place correct record, in particular, on constitutional issues.

It is seen that in Second Schedule in Part III of the Act, as extracted hereinbefore, Lohar was not included as a Scheduled Tribe. It is only, as evidenced from the translated version, that the community 'Lohar' came to be wrongly translated for the word "Lohra" or "Lohara" and shown to have been included in the Second Schedule, Part III applicable to Bihar State. Mr B.B. Singh, therefore, is right in placing before us the original version in English and the translated version.

Article 348(1)(b) of the Constitution provides that notwithstanding anything in Part II (in Chapter II Articles 346 and 347 relate to regional languages) the authoritative text of all bills to be introduced and amendments thereto to be moved in either House of Parliament.....of all ordinances promulgated by the President.....and all orders, rules, regulations and bye laws issued under the Constitution or under any law made by the Parliament, shall be in the English language. By operation of sub-article (3) thereof with a non obstante clause, where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article. Therefore, the Act and the Schedule thereto are part of the Act, as enacted by the Parliament in English language. It is the authoritative text. When the Schedules were translated into Hindi, the translator wrongly translated Lohara as Lohar omitting the word 'a' while Lohra is written as mentioned in English version. It is also clear when we compare Part XXI of Second Schedule relating to the State of West Bengal, the word Lohar both in English as well as in the Hindi version was not mentioned. Court would take judicial notice of Acts of Parliament and

would interpret the Schedule in the light of the English version being an authoritative text of the Act and the Second Schedule.

Accordingly, we hold that Lohars are Other Backward Class. They are not Scheduled Tribes and the Court cannot give any declaration that Lohars are equivalent to Loharas or Lohras or that they are entitled to the same status. Any contrary view taken by any Bench/Benches of Bihar High Court, is erroneous. It would appear that except some stray cases, there is a consistent view of that Court that Lohars are not Scheduled Tribes. They are Blacksmiths. We approve the said view laying down the correct law.

We may mention, before parting with the case, that a writ petition under Article 32 was filed in this Court in a representative capacity by some of the students belonging to Lohar community seeking admission into Medical Colleges to direct the District authorities to give them social status certificate as Scheduled Tribes. This Court dismissed the writ petition holding that no direction could be issued to authorities to act contrary to the Constitution and the laws and that the writ petition was, therefore, held not maintainable. This would give an insight into the consistent attempt by Lohar community to wear the mask of Scheduled Tribe status and to masquerade as such for getting the constitutional benefits meant for the poor tribes, which the President in consultation with the Governor or the Parliament had not granted to them and such status as Scheduled Tribe cannot be granted to O.B.Cs.

The appeal, therefore, is dismissed with costs throughout.