

CASE NO.:
Appeal (civil) 5483 of 2000

PETITIONER:
Prabhat Kumar Sharma

RESPONDENT:
Union Public Service Commission & Ors.

DATE OF JUDGMENT: 19/10/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T
With

Writ Petition (C) No. 173 of 2002
and
Writ Petition (C) No. 488 of 2000

BHAN, J.

This judgment shall dispose of Civil Appeal No. 5483 of 2000 and Writ Petition Nos. 173 of 2002 and 488 of 2000 filed under Article 32 of the Constitution of India. Point involved in all these cases being the same, they are disposed of by a common judgment.

The facts are taken from Civil Appeal No. 5483 of 2000.

This appeal has been filed by a member of "Lohar" community from the State of Bihar. "Lohars" are being treated as Other Backward Classes whereas he claims to be a member of Scheduled Tribes under the Scheduled Castes and Scheduled Tribes Order. The point in issue is concluded against the appellant by a judgment of this Court in Nityanand Sharma and Another Vs. State of Bihar and Others, 1996 (3) SCC 576. The appellant seeks to get the judgment in the case of Nityanand (supra) referred to a larger Bench by contending that the said judgment is wrong and needs reconsideration.

Prabhat Kumar Sharma, the appellant herein, was a candidate for the Civil Services Examinations held during the years 1991, 1992, 1993 & 1994. He claimed to belong to "Lohar" community, which according to him was a Scheduled Tribe in the State of Bihar. While considering the candidature of the appellant and while verifying his claim as belonging to Scheduled Tribe in the State of Bihar, the Union Public Service Commission prime facie came to the conclusion that the "Lohar" community was not included in the list of Scheduled Tribes for the State of Bihar issued by the Government of India. The Commission addressed a communication to the Deputy Commissioner, Ranchi to ascertain if "Lohar" community was recognized as a Scheduled Tribe in Bihar. The Deputy Commissioner in his reply indicated that "Lohar" community in the Bihar was recognized as "Backward Class" only and not as 'Schedule Tribe'. In the light of this, the appellant was asked by the Commission to clarify the latest position in respect of the community claim.

The appellant thereafter filed Writ Petition No. 2600 of 1992 in the High Court of Patna at Ranchi for a direction to

the State Government to issue him a caste certificate as 'Scheduled Tribe' on his being a member of "Lohar" community. The Court directed the Deputy Commissioner, Dhanbad to issue a provisional caste certificate describing the appellant as "Lohar" belonging to the Scheduled Tribe with the stipulation that the same shall be subject to the final result of the writ petition pending in the High Court. The Bench issued an interim direction on 18.02.1993 directing the Commission to permit the appellant to appear in the examination provisionally as a member of the "Lohar" community as a 'Scheduled Tribe'. As per interim directions issued by the High Court, the Commission treated the appellant along with 4 other candidates similarly placed as belonging to Scheduled Tribe provisionally, subject to proving their claim. The performance of these candidates including the appellant in the Civil Services (Main) Examination, 1994 was assessed on relaxed standards meant for Scheduled Tribe candidates. The result of the written part of the Civil Services (Main) Examination, 1994 was declared by the Commission on 27.04.1995 and none of the five candidates including the appellant could qualify the written examination on the basis of their performance even as Scheduled Tribe candidates. The appellant had earlier failed to qualify the Civil Services (Main) Examination for the year 1993 even though he was treated as Scheduled Tribe candidate provisionally.

Writ Petition came up for final hearing in July, 1999. The Single Judge of the High Court in its judgment dated 5.7.1999 held that the question, as to whether "Lohar" was a Scheduled Tribe in the State of Bihar stands concluded by a judgment of this Court in Nityanand's case (supra) and accordingly held that "Lohar" community is "Other Backward Class" (OBC) and not a Scheduled Tribe.

The appellant being aggrieved filed letters patent appeal in the High Court which has been dismissed by the impugned order.

Under the Constitution (Scheduled Tribes) Order, 1950 issued in exercise of powers conferred under Article 342 (a) of the Constitution of India, at S. No. 20 the tribe "Lohara" was mentioned as a Scheduled Tribe for the State of Bihar. The first Backward Classes Commission was set up in the year 1953 known as the Kaka Kalelkar Commission. According to the report of the Kaka Kalelkar Commission, amongst the list of Backward Classes, "Lohar" was shown at S. No. 60. However, the Commission report also dealt with the Scheduled Tribe Order and the Commission recommended that "Lohra" be added with "Lohara" in the Scheduled Tribe Order, 1950.

After the Kaka Kalelkar Commission report, the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956 was enacted which was brought into force with effect from 25.09.1956 and for Bihar, entry 20 was substituted to read as "Lohara" or "Lohra". Thus, right upto 1976 there was no ambiguity in the Scheduled Tribe Order as only "Lohara" was initially considered as a Scheduled Tribe and with effect from 1956 "Lohara" as well as "Lohra" were mentioned as Scheduled Tribe.

In the year 1976 the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was passed and in the English version of the same, viz. entry 22 the position as existing from 1956 was maintained. "Lohara" and "Lohra" were stated to be Scheduled Tribes. However, in the Hindi translation of the said entry "Lohara" was translated as "Lohar". Thus the Hindi translation had "Lohar" and "Lohra" as two Scheduled Tribes. After the 1976 Amendment, members of the "Lohar" community started claiming themselves to be members of Scheduled Tribe even though

they had been identified as a backward class as early as in the year 1955 by Kaka Kalelkar Commission.

Because of the ambiguity in the Hindi translation of the 1976 Scheduled Tribe Order, members of "Lohar" community claimed themselves to be members of Scheduled Tribe. The first litigation which came to the Supreme Court on this subject was Civil Appeal No. 4631 of 1990 in the case of Shambhu Nath Vs. Union of India & Another. This came up for hearing before three Judges of this Court. This Court disposed of the appeal on 12.9.1990 by passing the following order:-

" Special Leave granted.

The short point raised in this appeal is as to whether the Central Administrative Tribunal was right in holding that the appellant did not belong to the Lohar community which has now been declared as a Scheduled Tribe in Chapra District of Bihar. It is not in dispute that from 1976 onwards the community has been so included but according to the Postal Department of Union of India, at the time when the appellant entered service, the community had not been so included and, therefore, the recruitment on the footing that he was a member of a scheduled Tribe entitled to reservation was bad.

We have looked into the record and have heard counsel for the parties. In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of amendment of the list in 1976 and the dispute as to whether the community was known as "Lohar" or "Lohra" and if it was the latter, it has been so included from before, we do not think the Tribunal was justified in holding the view it has taken.

The appeal is allowed and the order of the Tribunal is vacated. The appellant shall now return to duty. The period between 16.12.1986 when the order removing him was made and the date when he would join in terms of our declaration now he shall be entitled to 50% of his salary. In regard to all other service benefits, his service shall be treated to be continuous. This decision may not be taken as a precedent. No costs."

[Emphasis supplied]

It may be noted that at that point this Court did not notice the discrepancy between the English and the Hindi translation of the Scheduled Tribes Order and proceeded on the premise that "Lohar" being mentioned in the Hindi version of the Order, the appellant was entitled to get the benefit of being a Scheduled Tribe. Even the counsel appearing on behalf of the Union of India did not point out to the Court the discrepancy and the order was passed treating the "Lohars" as members of the Scheduled Tribe. Rather the Union of India accepted the position that "Lohar" community is included in the Scheduled Tribe. This order was passed by the Court without any contest.

The question regarding the claim of "Lohar" community to be considered as Scheduled Tribe came up before this Court in Nityanand Sharma's case (supra), which was initially listed before the two Judge-Bench which upon being shown the case of Shambhu Nath (supra) thought it fit to refer the matter to three Judges. Incidentally, one of the Judges in the case of Nityanand Sharma (supra) was also a party to the decision in the case of Shambhu Nath (supra). The Court in Nityanand Sharma's case (supra) examined in detail as to whether there were three castes/tribes by the nomenclature of "Lohar", "Lohara" and "Lohra" or whether "Lohar" and "Lohara" were

one and the same thing and if "Lohar" and "Lohara" were two different castes/tribes then which one of them would qualify as a tribe or whether both will qualify as Scheduled Tribe. The Court after noticing the ambiguity existing in the Hindi translation of 1976 Scheduled Tribe Order held that whereas "Lohara" and "Lohra" belonged to the Scheduled Tribe, the "Lohars" in State of Bihar belonged to the Other Backward Classes.

The Court was called upon to declare as to whether the Hindi translation was correct or original English text was correct. For this limited purpose the Bench looked into the authoritative ethnographic survey conducted in India by H.H. Risley. From the said survey the Court observed that "Lohar" is a sub-caste of Barhai who work in iron. In Risley's Ethnographic Glossary the "Lohar" community has been dealt with in great detail. In the same Glossary "Lohara" and "Lohra" are mentioned as tribe of Chota Nagpur. The Court took notice of Article 348 (1)(b) of the Constitution of India which provides that the authoritative text of all bills to be introduced or amendments thereof to be moved in either House of the Parliament shall be in English language. The Bench after a detailed and considered judgment held that the original version which was in English was the authoritative text whereas the Hindi was the translated version. It was concluded that in the Hindi version there was some defect in the translation because of which the "Lohar" community had been claiming the advantage of being a "Scheduled Tribe" when actually they were only a backward class and thus could not be given the benefit of reservation as a Scheduled Tribe. It was further held by that Sambhu Nath's case (supra) could not be treated as authoritative in point as the same was based on concession.

After Nityanand Sharma's judgment (supra), an effort was made by the members of the "Lohar" community to claim themselves as Scheduled Tribe and the matter came up to the Supreme Court. A bench of two judges in Vinay Prakash & Ors. Vs. State of Bihar, 1997 (3) SCC 406, by a speaking order reaffirmed the view taken in the Nityanand Sharma's case (supra) and held that there was no question of the "Lohar" community being given the benefit of being Scheduled Tribe. The bench refused to refer the case of Nityanand Sharma's (supra) to a larger bench. This is the second attempt being made by the members of the "Lohar" community to get the decision in Nityanand Sharma's case (supra) re-opened and referred to a larger bench for reconsideration. There is no dispute on the proposition that if the Presidential Notification does not contain any specific class or tribe or a part of, then 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. The Courts must read the lists of Schedule Castes and Schedule Tribes under Article 341 and 342 read with Article 366 (24) and (25) as they find them and accept their ordinary meaning. Neither the Government nor the judiciary can add or subtract to the List of Scheduled Castes and Scheduled Tribes. But, the Court would have the limited jurisdiction to the extent of finding out whether the Community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned. To that limited extent, the court would have the jurisdiction but, otherwise, the court is devoid of power to include in or exclude from or substitute or declare synonyms to the Scheduled Caste or Scheduled Tribe or parts thereof or group of such castes or tribes.

Shri Rajeev Dhavan, learned senior counsel appearing for the appellant has contended that Nityanand's case (supra) was wrongly decided because:

(a) Nityanand's case was relied on social data selected by the Judges whereas such selection was prohibited by law;

(b) Nityanand's case failed to take into consideration the Hindi Text which was authoritative in its own language.

We do not find any substance in the submissions made by Shri Rajeev Dhavan. In Nityanand's case this Court examined in detail as to whether there were three casts/tribes by the nomenclature Lohra, Lohara and Lohar or whether Lohar and Lohara were one and the same thing and if Lohar and Lohara were two different castes/tribes then which one of them would qualify as a tribe or whether both will qualify as a tribe. This Court after detailed consideration came to the conclusion that the ambiguity was caused because of Hindi translation of the 1976 Scheduled Tribe Order. The Court was called upon to declare as to whether the Hindi translation was correct or the original English text was correct. For this limited purpose the Court looked at the Ethnographic Survey conducted in India by H.H. Risley. After taking into consideration the said survey, the Court observed that Lohar is a sub-caste of Barhai who works in iron. In Risley's Ethnographic Glossary the Lohar Community has been dealt with in great detail. In the same Glossary Lohara and Lohra are mentioned as tribes of Chota Nagpur. The Court did not refer to or rely upon the text of Risley to include or exclude a caste in the Presidential Order or amend or alter the Presidential Order. Risley's survey was examined to remove the ambiguity which had crept in because of the contradictory entries in English and Hindi versions of the Presidential Order.

The Court after taking notice of Article 348 (1) (b) of the Constitution of India which provides that the authoritative text of all Bills to be introduced or amendments thereof to be moved in either House of the Parliament shall be in English language came to the conclusion that the Hindi version was a translated version and the original version was the authoritative text and in the Hindi version there was some defect in translation because of which Lohar Community had been claiming the advantage of being a Scheduled Tribe when actually they were only a backward class and thus could not be given the benefit of reservation as a Scheduled Tribe. It was observed in Nityanand's case (supra)

"19. 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 \005..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 clauses, 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 letter 'a' while Lohra is written as mentioned in English version. It is also clear when we compare Part XVI of the 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."

We are in the respectfully agreement with the view taken in Nityanand's case.

Learned senior counsel appearing for the appellant contends that after the coming into force of the Official Languages Act, 1963 the Hindi version was the authoritative text and in the case of ambiguity between Hindi and English versions, the Hindi version would prevail. Article 348 of the Constitution clearly provides English to be the authoritative text in respect of Acts of Parliament, amendment to Acts subject to any law made by the Parliament. The Official Languages Act, 1963 vide Section 3 thereof provides for continuance of English language for official purposes of Union and for use in Parliament. Section 5 provides for a Hindi translation of all Central Acts and Ordinances promulgated by the President or if any order or rule or regulation or bye-laws issued under the Constitution or under any Central Act. Section 6 deals with State Act with which we are not concerned in the instant case. From the conjoint reading of Article 348 of the Constitution and Sections 3 and 5 of the Official Languages Act, 1963, English continues to remain the authoritative text in respect of the Acts of Parliament.

An attempt was made to get the judgment in Nityanand's case re-opened and considered by the larger Bench in Vinay Prasad's case (supra). Shri Rajeev Dhavan, learned Senior counsel appearing for the appellant in the instant case incidentally was the counsel in the said case as well. Submission similar to the one which has been made before us had been made in Vinay Prasad's case (supra) case as well. The Division Bench rejected the said contention. We are in agreement with the view taken in the Vinay Prasad's case (supra) as well.

For the reasons stated above we do not find any merit in

the civil appeal and the writ petitions and dismiss the same with costs throughout.

JUDIS