

PETITIONER:
VINAY PRAKASH & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 17/02/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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

This special leave petition arises from the judgment and order of the Patna High Court, made on October 10, 1996 in LPA No. 831/96. 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 purpose 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 20 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 notification published by the Government on January 6, 1995. In the meanwhile, there was 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 certificate 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 Judge of this Court, to which one of us (K. Ramaswamy, J.) was a member, in Shambhoo Nath vs. Union of India & Anr. [CA No. 4631/90 decided on September 15, 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 certificate 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 certificate in the light of the judgment passed by this Court in Shambhoo Nath's case. That writ petition was also dismissed by a Bench of three Judges, to which one of us (K. Ramaswamy, J.) was a member.

Later, the matter was considered in extenso in Nityanand Sharma vs. State of Bihar [(1996) 3 SCC 576] wherein, considering the entire history of the Lohars and Loharas, this Court has held in paragraphs 10, 11 and 12 that Lohars 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 which had taken contra view by the High Court 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 in Nityanand Sharma's case, it was not open to the High Court to go into the question and accordingly it dismissed the writ petition. The LPA filed in that behalf also came to be dismissed. Thus, this special leave petition.

Shri Rajiv Dhawan, learned senior counsel appearing for the petitioners, has contended that this Court in B. Basavalingappa vs. D. Munichinnappa [(1965) 1 SCR 316 at 322], Srish Kumar Choudhury vs. State of Tripura [1990 Supp. SCC 220 para 12 and para 20] and Palghat Thandan Samudhava Samrakshana Samiti vs. State of Kerala [1994] 1 SCC 359 at 364, para 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 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 Article 341 and 342 of the Constitution, as the case may be; therefore, the view of this Court mentioned in Nityanand Sharma's case is per incurium. We find no force in the contention. We make it clear that in the English version of the Presidential notification Lohars are 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's case.

It is seen that in Basavalingappa's case the question was whether 'Bhovi' caste was Scheduled Caste within the 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, preceding 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 Parasram vs. Shivchand [(1969) 1 SCC 20] and Srish Kumar Choudhary's case wherein this Court had held that it would not be open to the Court to go into question whether 'mochi' was included in the notified caste of chamar. Equally, in Palghat's case (supra) the question was whether Thandans or Ezhavas in Malabar District, which was part of the Madras Province, were of Scheduled Castes or Backward Classes and in view of the admissions made by the Government in paragraphs 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 other by this Court in particular in Nityanand Sharma's case.

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, Lohars were also wrongly included as was pointed out by this Court in Nityanand Sharma's case. It would, thus, be seen that the Presidential notification was unequivocal and, therefore, Lohars were not Scheduled Tribes within the meaning of the definition '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 the Parliament to make necessary amendments in Article 342(2) of the Constitution and it is to 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's case does not require any reconsideration; so also other decisions referred to therein except the Palghat's case, 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.

It is then contended that the doctrine of prospective application of the judgment in Nityanand Sharma's case may be applied. In support thereof, learned counsel relied upon two judgments of this Court in State of Karnataka vs. Kumar G.N. Ambiga [1995 Supp.(2) SCC 560] and Government of Andhra Pradesh vs. Bala Musalaiah [(1995) 1 SCC 184]. We are afraid, we cannot accede to the contention of the learned counsel. This is 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 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 judgements have no application to the facts in this case.

The Special Leave Petition is accordingly dismissed.