

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 31.10.2013

+ WP(C) No.1551 of 2012

DHNURDHARI SHIVWANSI CHHATRIYA
SAMAJ SEWA TRUST (REGD.) & ANR.Petitioners
Through: Ms. Deepali Gupta, Adv.

Versus

UNION OF INDIA & ANR.Respondents
Through: Mr. Ravinder Agarwal, CGSC.
Ms. Ferida Satarawala, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The case of the petitioners is that petitioner No.2, Shri Rajender Kumar, belongs to 'Dhanka' Tribe of Rajasthan and is presently residing in Delhi, his family having migrated to Delhi from Rajasthan. The petitioner No.2 submitted an application to the SDM, Saraswati Vihar on 14.1.2011 for grant of a Scheduled Tribe certificate. In the said application the petitioner No.2 claimed to be a 'Dhanka' by birth. He also claimed that his ancestors belonged to Rajasthan.

2. The SDM, Saraswati Vihar referred the matter to the Tehsildar, Jaipur with a request to convey the genuineness of the certificate of the father of petitioner No.2. Vide letter dated 1.7.2011, the Tehsildar, Bassi District of Jaipur informed the SDM, Saraswati Vihar that the caste certificate of Prabhu Dayal Dhanka, father of petitioner No.2 was

issued from his office but according to Memorandum dated 13.7.2010, Sr. No.12026/04/2009-C&LM-1 issued by the Government of India only the Dhanka Tribe people belonging to the District Sirohi, Abu Road, Rajasthan are considered to belong to ST category and persons belonging to District Jaipur and other areas of Rajasthan are not considered as ST category. Based upon the aforesaid communication from the Tehsildar, Bassi District, Jaipur, the SDM, Saraswati Vihar vide his communication dated 3.8.2011 informed the Public Grievance Commission, Government of NCT of Delhi that Scheduled Tribe certificate cannot be issued to petitioner No.2. Being aggrieved from the aforesaid communication, the petitioners are before this Court seeking the following reliefs:

“1. To declare the impugned O.M. No.12026/04/2009-C&LM-1 dated 13.7.2010, issued by the Ministry of Tribal Affairs, Government of India, New Delhi, as ULTRA VIRES, unconstitutional, illegal, arbitrary and unjustified.

2. To set aside/quash the ULTRA VIRES and illegal impugned O.M. No.12026/04/2009-C&LM-1 dated 13.7.2010, issued by the Ministry of Tribal Affairs, Government of India, New Delhi.

3. To set aside the letter dated 30.7.2011 by the SDM Saraswati Vihar, GNCT, Delhi, thereby rejecting the application of the petitioner No.2 for grant of Scheduled Tribe Certificate of Dhanka Tribe of Rajasthan, as arbitrary, illegal and unjustified.

4. To direct the respondent SDM, Saraswati Vihar, Delhi, to issue a scheduled caste status certificate of ‘Dhanka’ Scheduled Tribe to the Petitioner No.2 herein expeditiously.”

3. In its counter affidavit, respondent No.1-Union of India has stated that 'Dhanka' was not notified as a Scheduled Tribe in Rajasthan under the Constitution (Scheduled Tribes) Order, 1950. The said Tribe was not notified as a Scheduled Tribe in Rajasthan even through the Constitution (Scheduled Tribes) (Part C States) Order, 1951. The same was the position when Scheduled Castes and Scheduled Tribe Orders (Amendment) Act 1956 was notified on 25.9.1956.

This is also the case of respondent No.1 that the erstwhile State of Bombay included Abu Road taluka of Banaskantha District where 'Dhanka' had been notified as a Scheduled Tribe vide Constitution (Scheduled Tribes) Order, 1950 and the SAID entry continues to exist at serial No.5 of the said order. On re-organisation of the States in 1956, Abu Road taluka of Banaskantha district was included in the State of Rajasthan and became a part of its Sirohi District. This list of Scheduled Tribes in Rajasthan was thereafter modified through the Scheduled Castes and Scheduled Tribes List (Modification) Order 1956 by making the following entries therein:

“3. In Abu Road Taluka of Sirohi District:-

5. Dhanka, including Tadvi, Tetaria and Valvi”

Referring to the circular dated 22.3.1977 issued by the Government of India it is stated in the counter affidavit that the inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Castes or Scheduled Tribes status only benefit from the facilities provided for them and since people belonging to the same caste but living in different States/Union Territories may not necessarily suffer from the same disabilities, it is

possible the two persons belonging to the same caste but residing in different States/Union Territories may not both be treated to belong to Scheduled Castes/Tribe or vice-versa. It is further stated in the said circular that the residence for the aforesaid purpose connotes permanent residence of a person on the date of the Presidential Order scheduling his Caste/Tribe in relation to that locality.

4. Article 342 (1) of the Constitution of India to the extent it is relevant provides that the President may with respect to any State or Union Territory specify the tribe or tribal communities or parts of or groups within tribes or tribal communities which shall, for the purpose of the Constitution, be deemed to be Scheduled Tribes in relation to that State or Union Territory as the case may be. It would, thus, be seen that the Presidential notification referred to for Article 342 (1) of the Constitution has to be in relation to a particular State or Union Territory and not in relation to a part of a State or Union Territory though, the President need not specify the entire tribe or tribal community to be Scheduled Tribe in relation to that State and he may restrict the Presidential notification to parts or groups within a tribe or tribal community.

5. Admittedly, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, to the extent it is relevant, notifies “Dhanka, Tadvi, Tetaria & Valvi” as tribes in the State of Rajasthan. The aforesaid tribes have been mentioned at serial No.4 in the Second Schedule of the aforesaid act, under Part XIII-Rajasthan. It would, thus, be seen that the whole of the tribe/tribal community known as Dhanka and not a part or group of the said tribe has been notified in the State of Rajasthan. If the intention of the legislature was to extend the benefit

only to those members of Dhanka tribe who were residing in Abu Road taluka of District Sirohi of Rajasthan on the date Scheduled Caste and Scheduled Tribes (Amendment) Act, 1976 came into force, it was required to be so stated in the Schedule annexed to the Act. In the absence of any such restriction/clarification in the aforesaid entry, the benefit would be available to any members of Dhanka tribe in Rajasthan irrespective of whether the person concerned is a permanent resident of District Bassi, Jaipur or any other place in Rajasthan.

6. During the course of arguments, the learned counsel for the respondent-Union of India drew my attention to a letter dated 20.7.2009 written by the National Commission for Scheduled Tribes to the Government of India. The aforesaid letter to the extent relied upon by the learned for the Union of India reads as under:

S.No.	Name of Synonymous or Phonetic Similarity Castes, which are Scheduled Castes in the List of Rajasthan	Synonymous or Phonetic Similarity name of Scheduled Tribes in the list of Rajasthan	Scheduled Tribe Certificates are being issued to
1	2	3	4
1.	Dhanak, Dhanuk (Entry S.NO.20), Dhankia (Entry SI No.21) as per the Constitution Scheduled Castes & Scheduled Tribes Orders (Amendment), Act, 1976 (Page No.1384, Part XV – Rajasthan).	Dhanka, Tadvi, Tetaria, Valvi (Entry SI No.4 as a one group) as per the Constitution Scheduled Castes & Scheduled Tribes Orders, (Amendment),	Scheduled Castes listed at column no.2 to as a Dhanka.

	<p>* Hindi version of Constitution Scheduled Castes & Scheduled Tribes Orders, (Amendment), Act, 1976 (Page No.647, Part 1- Rajasthan)</p>	<p>Act, 1976 (Page No.1394, Part-XIII – Rajasthan)</p> <p>(Entry SI No.4 as a group) Hindi version of Constitution Scheduled Castes & Scheduled Tribes Orders, (Amendment) Act, 1976 (Page No.658, Part – II- Rajasthan)</p>	
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Prior to year 1976 the Dhanak, Dhanuk and Dhankia (S.NO.20&21) were claiming and have obtained caste certificates as ‘Scheduled Castes’ but after promulgation of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, these SC communities persons being the Phonetic similarities in the name of the Castes have started obtaining Scheduled Tribes certificates as ‘Dhanka’ which is scheduled as Scheduled Tribe in Rajasthan. In several cases father had claimed SCs benefit and have SC Certificates but children have been obtained Scheduled Tribes certificates. The state and district authorities hardly take note of the hard facts and records while issuing certificates in the State. This has resulted an increase in the issuance of false caste certificates of Scheduled Tribes in the State of Rajasthan and are being deprived to the legitimate right of genuine Scheduled Tribe candidates to get the various benefits of reservation available under different

development, educational, economic and political programmes and schemes being implemented by the Govt. of India as well as State Government according to their percentage of reservation.

According to the learned counsel for the Union of India it was on receipt of the aforesaid communication from the Commission that the clarification order dated 13.7.2010 was issued by the Government of India and sent to the Government of Rajasthan.

7. The aforesaid letter as would be evident from its perusal refers to certain malpractices in the matter of obtaining Scheduled Tribe certificates based upon phonetic similarity between Dhanak, Dhanuk and Dhankia. I fail to appreciate how such attempts to confuse Dhanak, Dhanuk and Dhankia with Dhanka could have been made the basis of denying the benefit granted to the persons belonging to Dhanka Tribe of Rajasthan. It is for the person issuing the Schedule Tribe certificate to verify and confirm before issuing such a certificate that the person concerned belongs to Dhanka Tribe of Rajasthan. But so long as the Presidential Order granting benefit of being a Scheduled Tribe to all the members of Dhanka Tribes is not amended accordingly, the respondent could not have restricted the benefit of the aforesaid Presidential Order only to those members of the said Tribe who are inhabitants of Abu Road in Sirohi District of Rajasthan. It is correct that in terms of the circular dated 22.3.1977 the person claiming benefit being a Scheduled Tribe should be a permanent resident of the State in respect of which a particular tribe has been notified as Scheduled Tribe. But, he need not be resident of any particular part of the State concerned and, therefore, it would be sufficient if it is shown that the person seeking a Scheduled Tribe certificate on the ground that he belongs to Dhanka Tribe is found

to be a permanent resident of Rajasthan in terms of the Office Order dated 22.3.1977 and it is also found that he belongs to the said Tribe. Once it is found, the Scheduled Tribe certificate cannot be denied to him on the ground that he was a permanent resident of some place which falls in Rajasthan but is out of Abu Road taluka of District Sirohi.

For the reasons stated hereinabove the impugned order dated 13.7.2010 is hereby quashed and respondent No.2 is directed to issue Scheduled Tribe certificate to petitioner No.2 in terms of the Rules framed by the Government of NCT of Delhi in this regard within eight (8) weeks.

Dasti.

OCTOBER 31, 2013
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V.K. JAIN, J.