

KISHORILAL HANS

v.

RAJA RAM SINGH & ORS.

November 30, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

Constitution (Scheduled Castes) Order 1950 and Scheduled Tribes Lists (Modification) Order 1956—Jatav caste not mentioned as Scheduled caste in Datia District of Madhya Pradesh—Election petition—Candidate belonging to Jatav caste seeking to prove that Jatav caste is included in chamar caste which is mentioned in order—Such inquiry not permissible in view of Art. 341 of Constitution.

The appellant was declared elected in February 1967 from the Bhandar Assembly constituency in District Datia of the State of Madhya Pradesh—a seat which was reserved for a scheduled caste candidate. Under the Constitution (Scheduled Castes) Order 1950 and Scheduled Tribes Lists (Modification) Order 1956 the President of India had declared in respect of District Datia the various castes which were to be recognised as Scheduled castes. In item 3 thereof the castes mentioned were : 'Chamar, Ahirwar, Chamar Mangam, Mochi and Raidas.' The respondent, an unsuccessful candidate at the said election filed an election petition *inter alia* on the ground that the appellant, was a Jatav by caste and therefore not a member of any of the scheduled castes mentioned in the Presidential Order. The appellant contended that the Jatav caste was a sub-caste of the caste chamar mentioned in the order. The High Court decided against the appellant who appealed to this Court.

HELD : From the evidence there was little room for doubt that although at one time Jatavs might have been chamars but they became a distinct caste or came to be recognised as a separate caste several years ago. The fact that they were shown separately as a caste in the Madhya Bharat and several others states in the Scheduled Caste or Scheduled Tribes Order (Amendment) Act 1956 shows that the existence of Jatav caste was recognised. [642 C]

The evidence in the form of representations made by the members of Jatav community including the returned candidate himself apart from other evidence established the existence of Jatav caste even in Datia district but it so happened that it was not included either in the Act of 1956 or the Presidential Order among the Scheduled Castes. [642 E]

If the matter were *res-integra* there might have been a good deal of difficulty in reconciling with the constitutional provisions the scheme followed in the Presidential Orders by which the same caste has been included in some districts of the same State and excluded in other districts. This Court, however in *Bhaiyalal v. Balkishan Singh & Ors.* made observations repelling the contention that under Art. 341 of the Constitution the President was not authorised to limit the notification to parts of a State. [644 C]

In *Bhaiyalal's case* it was also held that the plea that though the appellant was not a chamar as such he could claim the same status by reason of the fact that he belonged to the Dohar caste which is a sub-caste of the chamar caste, could not be accepted. An inquiry of that kind was held not be permissible having regard to the provision of Art. 341 of the Constitution. The case of *Basavalingappa v. Munichinnappa* was referred

A to. Following these two decisions it must be held that the returned candidate, in the present case, was not entitled to establish that Jatav caste was the same as Chamar. [644 F-H]

The appeal must accordingly be dismissed.

Bhaiyalal v. Harikishan Singh, [1965] 2 S.C.R. 877 and *Basavalin-gappa v. Munichinnappa*, [1965] 1 S.C.R. 316. applied.

B CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2123 and 2237 of 1969.

C Appeals under S. 116-A of the Representation of the People Act, 1951 from the judgment and order dated August 29, 1965 of the Madhya Pradesh High Court, Indore Bench in Election Petition No. 18 of 1967.

Rameshwar Nath, for the appellant (in C.A. No. 2123 of 1969) and respondent No. 1 (in C.A. No. 2237 of 1969).

D *A. K. Sen, G. L. Sanghi and K. P. Gupta*, for respondent No. 1 (in C.A. No. 2123 of 1969) and the appellant (in C.A. No. 2237 of 1969).

The Judgment of the Court was delivered by

E **Grover, J.** These are two cross appeals from a judgment of the Madhya Pradesh High Court. We shall give the facts of C.A. No. 2123/69 which arises from an election petition filed by the respondent Rajaram Singh an unsuccessful candidate in the High Court under s. 81 of the Representation of People Act 1951. hereinafter called the 'Act', challenging the election of the appel-lant who was declared duly elected in February 1967 from the Bhandar Assembly Constituency of the State of Madhya Pra-desh—a seat which was reserved for a scheduled caste candidate.

F The last date for filing the nomination papers was January 20, 1967, the date of scrutiny was January 21, 1967. The pool took place on February 20, 1967. The result of the election was declared on February 21, 1967. The appellant obtained 24,549 votes whereas respondent No. 1 obtained 8096 votes. A num-ber of allegations were raised in the election petition and as many as 12 issues were framed with a number of sub-issues. On all the issues the allegations of respondent No. 1 were negatived with the exception of issue No. 1. That issue was as follows :—

(1) (a) Whether respondent No. 1 Shri Kishorilal belongs to the Jatav caste as alleged by the petitioner.

H (b) Whether, therefore, respondent No. 1 does not belong to the scheduled caste and, therefore, does not possess the necessary qualifications of a scheduled

caste candidate for the Bhandar Assembly Constituency in question which is a reserved seat for scheduled caste candidate only, as alleged by the petitioner ?

A

(c) Whether Jatav caste is one of the sub-castes of Chamar as alleged by respondent No. 1 ?

B

(d) Assuming that 'Jatav' is a separate caste then whether 'Jatav' is recorded as scheduled caste for the purpose of Bhandar Assembly Constituency in question as alleged by respondent No. 1 ?

(e) Whether, therefore, on this ground he was entitled to contest the election as a scheduled caste candidate from the Bhandar Assembly Constituency, although he is a permanent resident of village Bargawan within the Seondha Assembly Constituency in which he is recorded as a voter as alleged by him ?

C

The High Court found sub-issue (a) in the affirmative and held that the appellant belonged to the 'Jatav' caste. On sub-issue (b) it was held that the appellant did not possess the necessary qualifications and was, therefore, unqualified to fill the seat in question. On sub-issue (c) the court was of the opinion that no inquiry could be made into the question whether the 'jatav' caste is one of the sub-castes of Chamar. Sub-issue (d) was answered in the affirmative and (e) in the negative.

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The only question which now survives for consideration is whether the High Court was right in holding that the appellant was not a member of the scheduled caste and was, therefore, disqualified to stand for a seat reserved for a scheduled caste. We may refer to the pleadings of the parties on the point. In the election petition it was alleged in para 6 that the name of the appellant before us, who will hereafter be referred to as the "returned candidate" was not entered in the electoral roll for legislative assembly constituency no. 2 Seondha, district Datia in part No. 81, village Bargawan on serial No. 154. He was a permanent resident of that village within the aforesaid assembly Constituency. The returned candidate belonged to the 'Jatav' caste which was not a scheduled caste declared for the purpose of election for Datia district. He had fraudulently concealed his jatav caste and represent himself to be a Chamar he had stood as a candidate for the Bhandar Assembly Constituency. Under the Constitution (Scheduled Castes) Order 1950 and the Scheduled Caste and Scheduled Tribes Lists (Modification) Order 1956 the President of India had declared in respect of District Datia the

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- A various castes which were to be recognised as scheduled caste. Item 3 thereof was as follows :—

“Chamar, Ahirwar, Chamar Mangam, Mochi or Riadas”.

- B It was asserted that Jatav caste had not been recognised as a scheduled caste by the President in the district of Datia as the social level of development of that community was of such a high degree that it did not require any such protection or recognition or privilege. It was further added that there were thousands of families of Jatavs in Datia district in the erstwhile State of Vindya Pradesh but Jatav caste was not recognised as a scheduled caste. In his written statement the returned candidate admitted that his name was entered as alleged in the election petition and that he was a resident of village Bargawan, district Datia. It was denied that he belonged to Jatav caste as alleged in the petition. It was claimed that he belonged to the Chamar caste and Jatav caste was one of the sub-castes of Chamar. It was denied that Chamar caste was not recognised as scheduled caste for the purpose of election to the Bhandar Constituency. It was also denied that the returned candidate did not fraudulently conceal his real Jatav caste and represented himself to be a Chamar. Without prejudice to what has been pleaded before us was claimed that even if ‘Jatav’ was treated as a separate caste and not a sub-caste of the Chamar caste ‘Jatav’ was recorded as a scheduled caste for the purpose of Bhandar assembly constituency from which the returned candidate contested the election. It was immaterial, according to him, whether Jatav as a separate caste was recorded or not in the Datia district in which his name was entered in the electoral roll. Other assertions in the election petition on the point were not admitted. It was ultimately maintained that there was no difference between Jatav and Chamar castes and it was reiterated that Jatav was only a sub-caste of Chamar.

- G According to the Presidential Order Jatav was not one of the castes mentioned in it so far as Datia district of the Madhya Pradesh State was concerned in which the returned candidate was enrolled as an elector. In the area comprising the Bhandar Constituency from where the returned candidate stood for election Jatav was one of the castes which was included in the aforesaid Order. But it is not claimed, and rightly so, that that fact could be of any avail, to the returned candidate. If he was a Jatav by caste and if that caste did not find any mention in the Presidential Order in the Datia district the returned candidate could not be regarded as having the qualifications for offering himself for election in a constituency reserved for a member of the scheduled caste.

Before us it has been argued on behalf of the returned candidate that he belonged to the Chamar caste which was admittedly one of the castes included in the Order even for Datia district. It is asserted that he was not a Jatav and that certain section of the Chamars in that district was anxious to be called by the name of Jatav because it had given up the profession of making shoes and did not wish to be called Chamar since that word smacked of inferior status. In other words, the caste to which the returned candidate belonged was, in fact, the Chamar caste and it did not make any difference if he along with several others from that caste made attempts at various stages to be called by the name of Jatav. The other contention that has been sought to be pressed is that all the Jatavs in Datia district are in fact Chamars and therefore the mention of the Chamar caste was sufficient for the purpose of including them in that caste and it was not necessary to mention Jatavs separately. Thirdly it has been submitted that even on the assumption that the returned candidate belonged to the Jatav caste he could not be held to have been disqualified to fill in the seat reserved for a scheduled caste keeping in view the provisions of s. 5 of the Act.

The crucial question which must first be determined is whether the returned candidate was a Chamar by caste or he belonged to the Jatav caste if there was such a caste in existence in the Datia district. The High Court considered the oral evidence and relied a good deal on some pamphlets which had been issued by certain organisations of the Jatav caste in which the returned candidate was an office-bearer. Reference may be made, in particular, to three pamphlets Exhs. P. 16, P. 17 and P. 18 which were printed and published. These pamphlets related to Jatav Sammelans which were held in certain places in tehsil Datia etc. In Exh. P. 16 the returned candidate was shown as one of the conveners; in Exh. P. 17 he was shown as one of the conveners. In Exh. P. 18 it was mentioned that the returned candidate, who was the Mantri (Secretary) of the Jatav Sabha Datia was also expected to attend the Jatav Sammelan Barchouli in tehsil Bhandar. As noticed by the High Court the substance of these pamphlets Exhs. P. 16 and P. 17 was that a deputation consisting of the representatives of the Provincial Jatav Sabha under the leadership of Atamdas President of that Sabha waited upon the Collector of Datia district on January 12, 1961. One of the grievances which was brought to the notice of the Collector was that some of the officers and the clerical staff did not record the caste of Jatav community as Jatav even though the members of the said community told them that their caste was Jatav. The Collector had issued an order to all his subordinates to record Jatav as the caste of the persons belonging to the Jatav community. By these

- A pamphlets Jatavs were advised to record their true caste *i.e.* 'Jatav' in the Census operations which were to commence in February 1961. Exh. p. 18 was a pamphlet. The substance of which was that a big Sammelan of the Jatav community and other depressed classes would be held on January 26, 1960 at Mouza Barchouli in which various difficulties which were being experienced by the Jatav community would be considered. As mentioned earlier it was stated in Exh. P. 18 that the returned candidate who was described as the Secretary of the Jatav Sabha, Datia was also expected to attend that Sammelan. Another document Exh. P. 60 which was a resolution passed at a Jatav Sammelan held at Tharet on October 24, 1963 showed that a demand had been made that scholarships should be given to the students belonging to the Jatav community exactly in the same manner as such scholarships were being awarded to students belonging to the scheduled castes. The name of the person who is shown as having seconded this resolution which was proposed by one Lalu Ram Jatav is that of the returned candidate. Certain criminal proceedings were started against the returned candidate in 1964.
- D From the record of the criminal case it appeared that in the personal bond Exh. P. 10 dated May 6, 1964 the returned candidate had given his caste as Jatav. There were other similar documents *i.e.* Exh. P. 55 which was a personal bond and the security bond Exh. P. 56. According to the High Court all these documents from 1960 to 1964 showed that the returned candidate was a Jatav by caste and in his capacity as Secretary of Jatav Sabha, district Datia he organised various Jatav Sammelans to get the grievances of the members of the Jatav caste redressed. In none of these documents it was mentioned that he was a Chamar nor was there the remotest indication to show that these Sammelans had been organised by the returned candidate in his capacity as a Chamar. The High Court referred to the oral evidence also but it will be wholly futile to refer to the entire evidence except the statement of the returned candidate himself and of some of the material witnesses produced by both sides, if necessary.

- There were certain other documents which had been filed by Hari Narain Ken P.W. 20 who was the General Secretary, Jatav Sabha, Madhya Bharat and the then Madhya Pradesh since 1948. It will be useful at this stage to refer to the original Presidential Order and the changes which were made in it subsequently. According to the Constitution (Scheduled Caste) Order 1950 which was promulgated in exercise of the powers conferred by clause (1) of Art. 341 of the Constitution soon after it came into force Jatavs were not shown among the scheduled castes in Madhya Pradesh and Madhya Bharat. Among the other castes Chamar was mentioned. Similarly in the Constitution (Scheduled Castes) Part C States Order 1951 only Chamar was shown

among the scheduled castés in Vindhya Pradesh. A Bill No. 8 of 1956 was introduced in the Lok Sabha which appeared in Gazette Extra Ordinary of April 6, 1956. This Bill was to provide for the inclusion in and exclusion from the list of scheduled castes and of scheduled tribes of certain castes and tribes. The entries proposed which are relevant for our purposes in the then three States of Madhya Pradesh, Madhya Bharat and Vindhya Pradesh were as follows :

Madhya Pradesh

"Chamar, Chamari, Mochi, Nona, Rohidas, Ram-nami Satnami, Surjyabanshi or Surjaramnami."

Madhya Bharat

"Chamar, Bairwa, Bhambi, Jatav, Mochi, or Regar."

Vindhya Pradesh.

"Chamar, Ahirwar, Chamar Mangan, Mochi or Raidas".

On September 25, 1956 the Scheduled Castes & Scheduled Tribes Order's Amendment Act 1956 received the assent of the President. The Act followed the same scheme which was to be found in the Bill. In other words in Vindhya Pradesh in entry 3 apart from Chamar, Ahirwar, Chamar Mangam, Mochi or Raidas were included. It is noteworthy that upto this stage Jatav caste was not included in the erstwhile States of Madhya Pradesh and Vindhya Pradesh but were included only in Madhya Bharat. After the States Reorganisation Act came to be enacted the Scheduled Castes and Scheduled Tribes List (Modification) Order 1956 was promulgated pursuant to s. 41 of the said Act. Madhya Bharat and Vindhya Pradesh ceased to be separate States and the territories of Madhya Bharat with a few exceptions and Vindhya Pradesh became part of the State of Madhya Pradesh. In the district of Bhind etc. in item 9 Jatav was included in the entry beginning with Chamar. However in several other districts Jatavs were not included and in particular in the districts which formerly formed part of Vindhya Pradesh including Datia.

It appears that when the Bill referred to before was introduced in the Parliament prior to the enactment of the States Reorganisation Act 1956 a memorial dated July 17, 1956 was sent by the President of the Jatav Sabha to the Government of India. In that memorial Exh. P. 57 a protest was made for not recognising the Jatav caste as a separate caste and a strong case was made

- A out for recognising Jatav as a distinct caste. It was pointed out in that memorial that the Government of India, prior to the coming into force of the Constitution, had regarded Jatav as a depressed class but the same had been excluded from the list of scheduled castes in some States i.e. Madhya Bharat, Bhopal and Madhya Pradesh etc. without any rhyme or reason. It was further stated :

C “Now an Amendment Bill of the Scheduled Castes which has been submitted by you in the Lok Sabha on 6th April 1956, therein the Jatav community has been illegally and unjustly proposed to be included in other Scheduled Castes with which we have no endogamous connection. I have the honour to point out here that Jatavs did never wish to leave the fold of the Scheduled Castes. But we desire to remain under a Separate Column as a separate caste in the list of Scheduled castes”.

- D Among the demands set out in the memorial were the following : (1) the Jatav caste should be included in the list of scheduled caste in the States of Madhya Pradesh and Vindhya Pradesh. It was added that in Vindhya Pradesh Jatavs were included in the list in the Presidential Order 1950; but it was urged that they should be separately mentioned and not grouped with the other castes. It was pointed out that in the following States Jatavs were included in the list of Scheduled castes but were grouped with Chamar, Reghar or Mochi etc. and that they should be separately mentioned as a scheduled caste :

“Madhya Bharat, Bhopal, Uttar Pradesh, Rajasthan, Ajmer, Delhi.”

- F It is apparent that repeated attempts were being made by the representatives of the Jatav caste to have their caste included in the list of Scheduled Castes wherever they were not included and to have that caste separated from Chamar, Regar or Mochi etc. and not be grouped with these castes in those areas where they were so shown. It is obvious that after the reorganisation of the States in 1956 when the Scheduled Castes and Scheduled Tribes List (Modification) Order 1956 was promulgated Jatavs were not included among scheduled castes in the districts including Datia which comprised the erstwhile State of Vindhya Pradesh. If the case of the returned candidate had been, right from the beginning, that whatever representations were made to which he was a party the object was to get a certain section of the Chamar who had started followed different avocations designated by the name of Jatavs and included under that name among the scheduled castes the position might have been different; but all

the pamphlets etc. and the activities of the returned candidate showed that he was a Jatav and that caste was quite different from that of Chamars. Indeed no such case was raised in the written statement and even in his own statement the returned candidate did not make out such a case. He started by saying in examination-in-chief that he was a Chamar by caste but then he proceeded to say that Jatav is a sub-caste of Chamar. He did not explain how he came to be associated with the various activities of the Jatav organisation where his name was shown prominently as one of the office-bearers, particularly with reference to the branch of the Jatav Organisation in Datia. He denied in cross-examination that he attended any Jatav Sammelan in Pichhor tehsil. He admitted, however, that in Bhandar tehsil he visited Jatav Sammelan twice. On one occasion he went to the Sammelan at Mouza Barcholi. It appears that he did not have any clear idea about the caste to which he belonged. The following questions and answers will show the complete confusion in his own mind as to whether Jatavs and Chamars formed one caste or whether Jatav was a sub-caste of Chamar :—

“Q. I put it to you whether you are a ‘Jatav Chamar’ ?

A. I am a Chamar (Mai Chamar Hoon).

Q. Whether ‘Jatav’ and ‘Chamar’ is one and the same thing ?

A. Yes, Chamar and Jatav is one and the same caste.

Q. Whether ‘Jatav’ is a sub-caste of ‘Chamar’ ?

A. It is true that the ‘Jatav’ is a sub-caste of ‘Chamar’.

Q. Whether you are a Jatav or not ?

A. I am a Chamar.

I am not a Jatav. As a Jatav Chamar I did not organise any Sammelan in Bhandar and Pichhor tehsils. I did that as a Chamar. Those Sammelans used to be known by the name of ‘Jatav’ Sammelan”.

The only attempt which appears to have been made to develop a case that the Chamars of Datia district wanted to be called Jatavs and so included in the list of scheduled was in the cross-examination of Rajaram P.W. 23. The following part of his cross-examination may be reproduced in this connection :

“Aherwar, Dohar, Raidas and ‘JATAV’ are not of ‘CHAMAR’ caste. They are all separate castes. It is

A not true that because the word 'CHAMAR' smacks of inferiority complex, therefore they started calling themselves 'JATAVS'.

B Q. I put it to you that because the Chamars prepare shoes and therefore, this is not liked by people and on this account they to be called 'JATAV'. What have you to say to this ?

A. This is not correct. CHAMARS do prepare shoes, but Chamar is a different caste from 'JATAV'".

C In our judgment it will not be in accord with the correct principles either of the law of pleadings or otherwise to allow the returned candidate to now make out a case for which no proper foundation was laid either in the written statement or even in the evidence.

D Coming back to the question whether the returned candidate belonged to the Jatav or the Chamar caste it is difficult to disagree with the High Court that he had failed to prove that he was a Chamar and not a Jatav. It is true that right from the beginning all the entries in the revenue records relating to the castes of the ancestors of the returned candidate including his close relations which have been fully referred to by the High Court showed that these persons were described as belonging to the Chamar caste. The High Court considered the weight of the evidence of these entries and pointed out that the entries had presumptive weight only and the same had been rebutted by the other evidence and, in particular, the various representations which were being made to the authorities concerned that persons belonging to the Jatav community were not being entered as Jatav but were being entered as Chamar. The Collector had, from time to time, passed orders and directed his subordinates to record the caste of these people as Jatav, if they stated that to be their caste. All this shows that in Datia district the members of the Jatav caste in spite of their persistent assertion and claim that they formed a case separate and distinct from that of Chamars was not being entered in the official records by the authorities concerned. It is somewhat difficult to accept as was the evidence of some of the witnesses that Jatav and Chamar were the same castes. Ved Prakash P.W. 19 on whom reliance was placed on behalf of the returned candidate stated that Chamar caste and Jatav caste were one and the same. The evidence of Sham Saxena P.W. 15 was to the same effect. Harinarain Ken P.W. 20 stated that there was an All India Jatav Sabha and he was the Secretary of the Madhya Pradesh Jatav Sabha since 1948. He proved the memorandum to which reference has already been made which was submitted on behalf of the Jatav caste for recognising it as a

distinct caste. He was quite certain that Jatav caste did not form part of the Chamar caste. The evidence of Dhani Ram R.W. 1, who is a close relation of the returned candidate, was that Jatav and Chamar was one and the same caste. R.W. 11 an uncle of the returned candidate claimed that he belonged to the Chamar caste but in cross-examination stated that he was a Jatav Chamar. From the entire evidence to which it is unnecessary to refer there seems to be little room for doubt that although at one time Jatavs might have been Chamars but they became a distinct caste or came to be recognised as a separate caste several years ago. The fact that they were shown separately as a caste in the Madhya Bharat and several other States in the Scheduled Caste and Scheduled Tribes Order (Amendment) Act 1956 shows that the existence of Jatav caste was recognised. A caste, it is well-known, cannot spring up or develop in a short period of time. It is unnecessary to go into the question of the origin of a caste but it cannot be gain said that a caste must be in existence before it can be recognised as such. The fact of recognition of Jatav caste as a caste in the statutory provisions and Orders mentioned before though confined to certain States and parts of those States cannot be ignored. It cannot, therefore, be said that Jatav and Chamar was one and the same. The only question is whether there was any Jatav caste in Datia district. The evidence in the form of representations made by the members of Jatav community including the returned candidate himself apart from other oral evidence established the existence of Jatav caste even in Datia district but it so happened that it was not included either in the Act of 1956 or the Presidential Order among the scheduled castes. This position appears to be highly anomalous. Ordinarily if Jatav caste was included so far as the old State of Madhya Bharat was concerned and was also included in the districts which constituted the erstwhile State of Madhya Bharat even after its merger in the Madhya Pradesh after the States Reorganisation Act there seems to be no reason or justification for excluding the Jatavs of Datia District. Their exclusion apparently was due to the fact that in the erstwhile State of Vindhya Pradesh of which Datia district formed a part Jatav caste was not included in the list of scheduled caste.

In order to find out why in the Presidential Order issued in 1950 pattern of which was followed in later statutory provisions and Orders certain castes were recognised as scheduled castes in other parts of the same State one has to go back to the Government of India (Scheduled Caste) Order 1936. By certain provisions in the First, Fifth and Sixth Schedules to the Government of India Act 1935, His Majesty in Council was empowered to specify the caste, race or tribe or parts of or groups within the

A caste, race or tribes which were to be treated as Scheduled caste. Part II of the aforesaid Order of 1936 which was issued in exercise of the power conferred by the aforesaid provisions was as follows :—

B “subject to the provisions of this Order, for the purposes of the First, Fifth and Sixth Schedules to the Government of India Act, 1935, the castes, races or tribes, or parts of or groups within castes, races or tribes, specified in Parts I to IX of the Schedule to this Order shall, in the Provinces to which those Parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule”.

D In the Schedule certain castes were mentioned as scheduled caste for the whole of a particular Province or part thereof. While issuing the Presidential Orders under Art. 341 of the Constitution the same pattern was adopted and the scheme was to specify scheduled castes throughout a particular State or the Union territory as well as parts of that State or Union territory, as the case may be, in relation to the locality in which the members of these castes etc. were residing. This test of residence leads to highly anomalous and unjust results which can be illustrated by a simple example. If there are two brothers belonging to Jatav caste who are equally qualified to be employed in a particular service or post in respect of which reservation is provided for the members of the scheduled caste, one living in district A in the State of Madhya Pradesh can avail of that benefit whereas the other who lives in an adjoining district B for which that caste is not included in the Order would be deprived of the benefit of that reservation which is for the whole State even though there may be no difference in the socio-economic condition of the caste to which the brothers belong in the districts where they reside. Several other anomalies can arise because it is only a member of a caste which is included in the statutory provisions or the Orders mentioned before who can take advantage of the benefits conferred by the constitutional provisions. Article 341 of the Constitution provides for specification of caste, race or tribe etc. for the purpose of the Constitution in relation to that State or Union territory, as the case may be. In the Twelfth Report of the Commission for Scheduled Castes and Scheduled Tribes 1962-63 it has been pointed out at page 12 that a person may belong to a caste or tribe declared to be a scheduled caste in his originating State but who may have been residing for a long time in another State (say, for the sake of service or business) where his caste/

tribe is not recognised as a Scheduled Caste/Tribe. In the relevant statutory provisions and Orders such a person would be denied the benefits under the Constitution even though he may actually continue to suffer from the effects of the disabilities resulting from the practice of untouchability. The Commissioner suggested that they should be treated as eligible for benefits made available to the scheduled castes/tribes in the home State etc.

If the matter were *res-integra* we would have felt a good deal of difficulty in reconciling with the constitutional provisions the scheme followed in the statute and the Orders concerned by which the same caste has been included in some districts of the same State and excluded in the other districts. This Court, however, has in *Bhaiyalal v. Harikishan Singh & others*⁽¹⁾ made observations repelling the contention that under Art. 341 of the Constitution the President was not authorised to limit the notification to parts of a State. The reason given was that while specifying caste, race or tribe the President may well come to the conclusion that not the whole caste, race or tribe but part of or groups within them should be specified. This would be so where the President is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. It would appear from the Tenth Report of the Commissioner for Scheduled Castes and Scheduled Tribes 1960-1961 (page 22) that two factors have been mainly taken into account for including a particular caste, race or tribe in the list of scheduled castes and scheduled tribes *i.e.* socio-economic conditions and population figures.

In *Bhaiyalal's case*⁽¹⁾ the appellant's election had been challenged on the ground that he belonged to the Dohar caste which was not recognised as a scheduled caste for the district in question and so his declaration that he belonged to the Chamar caste which was a Scheduled Caste was improperly and illegally accepted by the Returning Officer. It was held that the plea that though the appellant was not a Chamar as such he could claim the same status by reason of the fact that he belonged to Dohar caste which is a sub-caste of the Chamar caste could not be accepted. An inquiry of that kind would not be permissible having regard to the provisions contained in Art. 341 of the Constitution. The case of *Basavalingappa v. Munichinnappa*⁽²⁾ was referred to. In that case it was laid down that generally speaking it was not open to any person to lead evidence to establish that his caste includes or is the same as another caste which is notified in the Order. Following these two decisions it must be held that the returned candidate, in the present case, was not entitled to estab-

(1) [1965] 2 S.C.R. 877.

(2) [1965] 1 S.C.R. 316.

A lish that Jatav caste was the same as Chamar. In this view of the matter nothing else survives for consideration or decision.

B In the result the appeal (C.A. 2123/69) fails and is dismissed. The other appeal (C.A. 2237/69) not having been pressed is also dismissed. Taking into consideration the entire circumstances we leave the parties to bear their own costs in this Court.

G.C.

Appeals dismissed.