

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16069 of 2023

Subham Kumar Dora

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Learned advocates appeared in this case:

For petitioner

:

Mr. Digambara Mishra, Advocate

For opposite parties

:

Ms. Suman Pattanayak, AGA

CORAM: JUSTICE ARINDAM SINHA

Dates of hearing : 18.05.2023, 31.07.2023 and 03.08.2023

Date of judgment : 03.08.2023

1. Petitioner's case is that his grandfather and father were both issued caste certificates stating they belong to 'Kondadora' Scheduled Tribe. He has challenged order dated 6th May, 2023 passed by the Tahsildar, whereby the authority found that he does not belong to the Scheduled Tribe but is of caste 'Telenga'. The finding was based on the reason reproduced below.

“On going through the Sabik R.O.R (1936 Settlement) under Holding No.18 of Mouza-Jammunda, P.S- Tusura, recorded tenants are Kunja Bihari Dora, Parakhita Dora, S/o Padmanabha Dora, (forefathers of Subham Dora) and the caste has been recorded as Telenga. The original Sabik Khata No. 18 has been corresponding to Hal Khata No.34 and Khata No.23, wherein the caste has also been recorded as Telenga. It reveals from Bhulekh website/ Tahasil record room and District record room.”

2. On earlier occasion State had contended that original entry in Sabik Khata no.18, corresponding to Hal Khata no.34 and Khata no.23 was made on 15th May, 1935 by the Settlement Officer, Patna State. Petitioner's grandfather was thereby recorded to belong to caste 'Telenga'. 'Dora' is an honorific title. The grandfather's certificate is pending verification. Furthermore, the writ petition is not maintainable on available efficacious alternative statutory remedy of appeal.

3. In response, petitioner had drawn attention to order dated 21st April, 2003 made by the Tahsildar, acting on petition filed by petitioner's grandfather. There was direction in the order to start a Revenue Misc. case for changing caste to 'Kondodora' in place of

‘Telenga’ in respect of holding no.23 in village-Jammunda. Petitioner then demonstrated that present record in respect of the plot bears caste ‘Kondadora’. Further submissions were made by Mr. Mishra, learned advocate appearing on behalf of petitioner, as were recorded in paragraphs 3 and 4 of order dated 31st July, 2023. The paragraphs are reproduced below.

“3. He submits, his client’s case is not that caste Telenga/Telengana is synonymous as with Kondadora. His client’s case is that he belongs to Scheduled Tribe ‘Kondadora’. His ancestors migrated to places in Western Odisha and in keeping with origin of migration, they were called and came to be known as, inter alia, Telenga. He relies on Note of Clarification on the Ethnic Status of the Dora/Konda Dora of Western Orissa, annexed at pages 37 and 38 in the writ petition. The note carries views of Scheduled Castes Scheduled Tribes Research Training Institute (SCSTRTI). It is extracted and reproduced below.

“Thus as per our study, the people with Dora title ie, the so called “DORA” people of our study area ie, Bargarh & Bolangir Districts in Western Orissa and in Koraput district in Southern Orissa are found to be

“Kondadora” (ST). Regarding the ethnic status of the so called “DORA” of other districts these findings can not be generalized because as clearly indicated above as well as in our accompanying ethnic status report, the nomenclature “Dora” appears to be broad and classificatory because “Dora” is not the name of a particular community but an honorific title commonly used by a number of communities of tribal and non-tribal origin. Among them only those who possess the socio-cultural characteristic of the Kondadora as comparatively analysed in our ethnic status report can only be treated as Kondadora (ST).”

(emphasis supplied)

4. He hands up counter filed by State in WP(C) no.20909 of 2011 (Motiram Majhi v. State of Odisha and others), dismissed by coordinate Bench on 16th November, 2021, pursuant to counter filed by State. The counter is handed back to Mr. Mishra.”

Accordingly, petitioner was given liberty to disclose the writ petition and counter filed by State. They have been disclosed and copies given to Ms. Pattanayak, learned advocate, Additional Government Advocate appearing on behalf of State.

4. Today Ms. Pattanayak, relies on judgment of the Supreme Court in **State of Maharashtra vs. Keshao Vishwanath Sonone**, reported in **(2021) 13 SCC 366**, paragraphs 45 to 65. She submits, the Supreme Court said, the conclusion is inescapable that the High Court could not have entertained the claim or looked into the evidence to find out and decide that tribe 'Gowari' is part of Scheduled Tribe 'Gond Gowari', the latter included in the Constitution (Scheduled Tribes) Order, 1950. She submits, the declaration of law is clear that a caste cannot be changed or meaning of a caste given as synonymous to a caste mentioned in the Presidential Order by any authority, except through amendment of the Presidential Order by Act of Parliament.

5. Disclosure by petitioner of challenge to the circular issued by the Government giving clarification regarding fake caste certificate on 'Dora' community based on note carrying view of SCSTRTI was challenged before this Court. State filed counter affidavit to the writ petition, where it defended the circular. The writ petition was dismissed as petitioner therein did not prosecute it. Hence, the clarification was not interfered with. Petitioner's case is that the Revenue Misc case was started pursuant to the clarification and the

revenue record rectified to reflect correct caste of his grandfather in respect of holding no.23 in village-Jammunda.

6. The rectification of record resulted to be good presumption of petitioner's caste as belonging to Scheduled Tribe 'Kondadora'. Petitioner relies on this presumption to assert that he is entitled to issuance of the caste certificate. The rectification in the record is pursuant to a study made by the institute (SCSTRTI) and view taken thereupon that those people in then Bargarh and Bolangir districts in Western Orissa and in Koraput district in Southern Orissa called 'Dora', were found to be 'Kondadora'. Contention of State on 'Dora' being a honorific title appears to be based on this view. The study revealed that because of origin of migration the tribal people were known as, inter alia, 'Telenga'. This was a misdescription on convenience of attaching a name to them. That cannot obliterate their identity as belonging to the Scheduled Tribe 'Kondadora'. Entry in the land record is a rebuttable presumption. There is no rebuttal. Presumptions are possible in law as can be relied on to be evidence.

7. Petitioner's case is not based on an interpretation of belonging to a caste synonymous with one that finds mention in the Presidential Order. Nor is his case that the caste he belongs to, should be one which

entitles him to issuance of caste certificate even though the caste is not mentioned in the Presidential Order. His case is that he belongs to the Scheduled Tribe 'Kondadora'. It is a mentioned Scheduled Tribe. There was misdescription of his grandfather's caste in the record. The misdescription has been rectified. The rectification stands and is good evidence of his identity.

8. Impugned order dated 6th May, 2023 is set aside and quashed on being perverse, it not based on relevant evidence. As such the writ petition is maintainable. The Tahsildar is directed to forthwith issue the caste certificate unless the application is to be rejected on some cogent reason, other than those mentioned in impugned order and pendency of verification of caste certificate of petitioner's grandfather or any other relative. Either the rejection or issuance of the caste certificate must be done, within six weeks of communication.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant