

## Praveen Kumar Gond Vs State of U.P. and Others

**Court:** ALLAHABAD HIGH COURT

**Date of Decision:** Sept. 6, 2014

**Acts Referred:** Constitution of India, 1950 Article 341, 341(1), 342, 342(2), 366(25)

**Citation:** (2015) 1 ADJ 724 : (2015) 1 UPLBEC 93

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Advocate:** J.A. Azmi, J.J. Munir and V.D. Yadav, Advocates for the Appellant; K.S. Kushwaha, Advocates for the Respondent

### Judgement

Sudhir Agarwal, J.

Writ petition has been restored to its original number wide order of date passed on recall application. As requested by

learned counsel for the parties, the same is taken up for hearing and is being disposed of finally. Heard Sri J.J. Munir, learned counsel for the

petitioner and learned Standing Counsel for the respondents.

2. The impugned order dated 31.12.2007 has been passed cancelling selection/appointment of petitioner on the post of Runner on the ground that

Scheduled Tribe certificate submitted by petitioner has been cancelled by District Magistrate, Azamgarh on the ground that in District Azamgarh,

no Gond community people are available.

3. Sri J.J. Munir, learned counsel for the petitioner contended that vide the Presidential notification published in Gazette of India (Extraordinary)

dated 7.1.2003, for the State of U.P., the Constitution (Scheduled Tribes) (Uttar Pradesh) Order, 1967 (hereinafter referred to as the "Order,

1967") was amended and following Entry "6" was inserted therein:

6. Gond, Dhuria, Nayak, Ojha, Pathari, Raj Gond (in the districts of Maharajganj, Sidharth Nagar, Basi, Gorakhpur, Deoria, Mau, Azamgarh,

Jonpur, Ballia, Ghazipur, Varanasi, Mirzapur and Sonbhadra)

4. Therefore, all Gonds in Azamgarh district have been declared Scheduled Tribes. Once that has been done by Presidential notification it was not

open to District Magistrate to take a view so as to make aforesaid notification ineffective and inoperative in respect of Gond in District Azamgarh.

The District Magistrate has no such jurisdiction.

5. In the present case the petitioner applied for a caste certificate stating that he is resident of Mohalla Elwal, Tehsil Sadar, District Azamgarh and

belongs to cast ""Gond"", which is a Scheduled Tribe under the Presidential Notification dated 7.1.2003. Petitioner requested that since those who

belong to Gond community and resident of District Azamgarh have been declared Scheduled Tribes, therefore, a certificate should be issued to

him. Tehsildar Sadar after due investigation issued a caste certificate dated 16.10.2004 which has been placed on record as Annexure-2 to the

writ petition.

6. An advertisement was published on 27.8.2007 by Executive Engineer, Tube-Well Division, Jaunpur for making recruitment of Group "D"

backlog vacancies of Scheduled Castes, Scheduled Tribes and Other Backward Classes, pursuant where to petitioner applied. He was interviewed

on 17.10.2007 and was declared selected. Appointment letter dated 5.11.2007 was issued by Executive Engineer appointing petitioner as Runner,

a Group "D" post, in the pay scale of Rs. 2550-3200/-, pursuant where to petitioner submitted his joining report on 21.11.2007. The aforesaid

joining was not accepted by respondents and subsequently appointment letter has been cancelled vide order dated 31.12.2007 relying on District

Magistrate, Azamgarh's order dated 22.2.2006, holding that caste certificate issued to petitioner was made inoperative by the said order and since

petitioner has not submitted any fresh caste certificate, therefore, his appointment is not valid.

7. Copy of District Magistrate's order dated 22.2.2006 has also been placed on record as Annexure-9 to the writ petition. I have gone through

the aforesaid letter and finds that aforesaid order was issued on a representation made by one, Shanker Prasad Yogacharya and has nothing to do

with the matter of petitioner. The aforesaid letter nowhere says that caste certificate issued to persons belong to Gond community, resident of

District Azamgarh were all illegal and would be deemed to have been cancelled.

8. Learned Standing Counsel when asked as to which part of aforesaid order of District Magistrate has the result of cancellation of caste certificate

issued in favour of petitioner, he could not show any decision taken by District Magistrate in this regard, as may be discernible from aforesaid

order, but sought to rely on observations made by District Magistrate, Azamgarh in Para 8 of the aforesaid order, which reads as under:

English translation by the Court

Gond, a scheduled tribe, has no relation with Kahar or Gaud Caste. As per information received from tehsils, Gond caste does not inhabit

Azamgarh district, though Gaud caste, which is a sub-caste of Kahar caste, inhabits there.

9. Learned Standing Counsel submitted that since District Magistrate has observed that as per report received from various Tehsils, Gond

community is not residing in District Azamgarh, therefore, question of issuance of caste certificate to any resident of Azamgarh as Scheduled Tribe,

being a person of Gond community, does not arise.

10. However, I find that in Clause 10 of the same order the District Magistrate himself has admitted that 5000 certificates to the members of Gond

community of District Azamgarh have already been issued and for future, certificates would be issued to eligible persons after making due

verification in accordance with relevant Government orders. Clause 10 reads as under:

English translation by the Court

The plaintiffs statement regarding issuance of 5,000 (five thousand) caste certificates in Azamgarh district showing Gond to be a scheduled tribe, is

absolutely baseless. In the reports received from the tehsils, about 800 certificates have been mentioned as issued in Azamgarh district. As far as

the issue of caste certificate in relation to Gond caste in future is concerned, scheduled tribe certificates shall be issued to eligible persons as per

rules only after thorough examination in terms of the provisions mentioned in para 1 of the Government Order.

11. Even otherwise, in my view, it was not open to District Magistrate to observe that there was no person of Gond community residing in District

Azamgarh when Presidential notification after making due inquiry in the matter has already included "'Gond"' community people of District

Azamgarh in the list of "'Scheduled Tribes"' by notification dated 7.1.2003 which received the assent of President on 7.1.2005.

12. The respondents have filed a counter affidavit wherein it has been stated in paras 4, 5 and 7 that caste certificate of petitioner was declared

ineffective as per Tehsildar's report since District Magistrate's decision dated 22.2.2006 shows that Gonds are not residing at District Azamgarh

and, therefore, his appointment being illegal was cancelled. Paras 4 and 5 of the counter affidavit are reproduced as under:

4. That the contents of para 3 of the writ petition are not admitted as stated. As per report of Tehsildar, the petitioner's caste certificate of

Scheduled Tribes was declared to be ineffective, therefore the petitioner does not belong to Scheduled Tribes.

5. That the contents of paras 4, 5 and 6 of the writ petition are not admitted as stated. As per decision taken by the District Magistrate by order

dated 22.2.2006 Gonds are not residing in District Azamgarh.'''

13. Copy of Tehsildar's letter dated 21.11.2007 has also been placed on record as Annexure-CA-1, which inform the Executive Engineer, Tube-

Well Division, Jaunpur that District Magistrate's order dated 22.2.2006 has rendered caste certificate issued to petitioner ineffective and it is

pursuant thereto the impugned order has been passed.

14. Sri J.J. Munir, learned counsel for the petitioner, stated that at no point of time any order has been passed, either by Tehsildar or District

Magistrate, Azamgarh, cancelling caste certificate dated 16.10.2004 issued to petitioner. To suggest that it was rendered ineffective by District

Magistrate's letter dated 22.2.2006 is clearly misreading thereof inasmuch as District Magistrate's order itself nowhere makes such a declaration

and something has been sought to be read therein which is not there, therefore, the entire action of respondents is patently illegal. He further

submitted that once the competent authority under Article 342 of the Constitution has found that certain people belong to certain classes, are

residing in certain area, and liable to be included in the list of ""Scheduled Tribe"", and accepting the said report, notification by President of India is

issued including such classes in Scheduled Tribe list, it is not open to District Magistrate or anyone else to hold that the class which has been

included in Schedule Tribe list is not residing in that area and to make out a new case on its own. It is further contended that District Magistrate has

nowhere declared any caste certificate already issued, ineffective, inoperative or illegal, hence assumption on the part of Tehsildar to make

communication to the same effect vide his letter dated 21.11.2007 (Annexure-CA-1) was clearly erroneous on his part. Without applying mind on

various documents, the Executive Engineer also in a mechanical manner has issued impugned order, which is patently illegal.

15. Besides appreciating the other aspect I find it necessary to clarify the effect of inclusion of a class in a notification issued by President of India

declaring such class to be a ""Scheduled Tribe"" or Scheduled Caste.

16. In the context of Scheduled Tribe, in U.P. Public Service Commission, Allahabad Vs. Sanjay Kumar Singh, , the Court said that there is no

particular definition of Scheduled Tribe in the Act. However, the term ""Scheduled Tribe"" can only be understood in accordance with the

provisions of Article 342 of the Constitution, read with notification issued thereunder, as interpreted by the Court.

17. In Bhaiyalal Vs. Harikishan Singh and Others, election of Bhaiyalal was challenged by one Harikishan Singh. The two parties have contested

election from Berasia Constituency in the District Sihore (Madhya Pradesh), which was a reserved seat. It was contended that election-petitioner,

Bhaiyalal belong to Dohar caste and was not a Chamar, which was a scheduled caste. Bhaiyalal claimed himself to be a member of Chamar caste,

hence a Scheduled Caste, which claim was accepted by Returning Officer. The election petition was allowed, whereafter matter was taken to High

Court which dismissed writ petition and confirmed the findings of Tribunal. Then the matter came up before Apex Court. The returned candidate,

Bhaiyalal, whose election was set aside sought to argue that he was a ""Dohar Chamar"" which according to him was sub-caste of Chamar

(Scheduled Caste). He urged that the said sub-caste was also called ""Mochi"". The admitted fact is that in the list of Scheduled Caste Presidential

Notification entry was "Chamar", "Jatav" or "Mochi". It is in these circumstances, the Apex Court said that the plea that ""Dohar"" caste is a sub-

caste of ""Chamar"" caste cannot be entertained in view of Constitution (Scheduled Castes) Order, 1950. This order has been issued by President

under Article 341 of the Constitution. In order to determine whether or not a particular caste is a Scheduled Caste within the meaning of Article

341, one has to look only on the public notification issued by President in that behalf. The Court said:

In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the

enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not

a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste,

cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Art. 341.

(emphasis added)

18. A similar issue came up in B. Basavalingappa Vs. D. Munichinnappa, . The question arose, whether D. Munichinnappa, though Voddar by

caste, belonged to Scheduled Caste of "Bhovi", mentioned in the order. The Court said that it is not open to make any modification in the Order

by producing evidence to show that though caste "A" mentioned in the Order, caste "B" is also part of caste "A" and, therefore, must be deemed

to be included in caste "A". A question also arose, whether in the presidential notification area wherein the particular castes, races or tribes are to

be so treated, can be confined so as to be treated as Scheduled Caste or Scheduled Tribe or not. The Apex Court upheld that this can be done by

mentioning the area also in such public notification. It said:

10. Mr. Chatterjee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different

districts or sub-areas of the States. His argument was that what the President can do under Art. 341(1) is to specify the castes, races or tribes or

parts thereof, but that must be done in relation to the entire State or the Union territory, as the case may be. In other words, says Mr. Chatterjee,

the President cannot divide the State into different districts or sub areas and specify the castes, races or tribes for the purpose of Art. 341(1). In

our opinion, there is no substance in this argument. The object of Art. 341(1) plainly is to provide additional protection to the members of the

Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes,

races or tribes, 883 the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and

that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the

conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes,

races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination

of the social and education are backwardness of the race, caste or tribe justifies such specification. In fact, it is well-known that before a

notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to

the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups

of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in

regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in

different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in

question. Therefore, Mr. Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is

outside his authority under Art. 341(1).

(emphasis added)

19. In *Parsram and Another Vs. Shivchand and Others*, again a similar controversy arose. Following the earlier decisions in *Bhaiyalal v. Harikishan*

*Singh (supra)* and *B. Basavalingappa v. D. Munichinnappa (supra)* the Court said that there would be no use of looking into any evidence, inquiry

etc. to find out whether entry in public notification can include any caste, creed, race etc. or not since it is only the public notification which must be

seen and nothing else. In para 15 of the judgment the Court said:

....the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it

is not for us to examine it and come to a conclusion that if a person was in fact a Mochi, he could still claim to belong to the scheduled caste of

Chamars and be allowed to contest an election on that basis.

20. In *Kishorilal Hans Vs. Raja Ram Singh and Others*, a question arose, whether Kishorilal belongs to Jatav caste and whether Jatav is one of the

sub-caste of Chamar. Under the Constitution (Scheduled Castes) Order, 1950 and Scheduled Castes and Scheduled Tribes Lists (Modification)

order, 1956 the President of India had declared in respect of District Datia (Madhya Pradesh) certain castes to be recognized as Scheduled Caste

and Item 3 thereof read as under:

Chamar, Ahirwar, Chamar Mangam, Mochi or Riadas.

21. The Court said in para 4 of the judgment as under:

4. Accordingly 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.

22. Then a question was argued that Kishorilal was actually a Chamar but certain Sections of Chamar caste of District Datia were anxious to be

called as Jatav and having given up the profession of making shoes they did not wish to be called Chamar which smacked of inferior status and that

was the position with him also. It was contended that all Jatavs in District Datia are in fact Chamar and, therefore, mention of Chamar caste is

sufficient for the purpose of including them in that caste and it was not necessary to mention Jatav separately for District Datia. Finding that

Kishorilal was a "Jatav", the Apex Court relying on the decisions in *Bhaiyalal v. Harikishan Singh* (supra) and *B. Basavalingappa v. D.*

*Munichinnappa* (supra) said:

....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 turned candidate, in the present case, was not entitled to establish that Jatav caste was the

same as Chamar. In this view of the matter nothing else survives for consideration or decision.

(emphasis added)

23. In Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another, the decision was taken by State

Government not to treat members of Thandan community belonging to erstwhile Malabar District including Palghat District of State of Kerala as

members of Scheduled Caste. This was challenged in a writ petition stating that State Government had no such authority and it should continue to

treat ""Thandan"" community of aforesaid area as ""Scheduled Caste"" with all due benefits. The facts of that case are similar to present case. The

Court said that State Government had no such power. It observed in para 16 as under:

16. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a

State but also ""parts of or groups within castes, races or tribes"" which shall be deemed to be Scheduled Castes in relation to a State. By reason of

Article 341 a part or group or Section of a caste, race or tribe, which, as a whole, is not specified as a Scheduled Caste, may be specified as a

Scheduled Caste. Assuming, therefore, that there is a Section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste)

which is called Thandan in some parts of Malabar area, that Section is also entitled to be treated as a Scheduled Caste, for Thandans throughout

the State are deemed to be a Scheduled Caste by reason of the provisions of the Scheduled Castes Order as it now stands. Once Thandans

throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to

the State Government to say otherwise, as it has purported to do in the 1987 order.

(emphasis added)

24. Relying on two Constitution Bench decisions in Bhaiyalal v. Harikishan Singh (supra) and B. Basavalingappa v. D. Munichinnappa (supra), in

para 17, the Court said:

17.....It held that the two Constitution Bench judgments indicated that any amendment to the Presidential Orders could only be by legislation. The

Court could not assume jurisdiction and order an enquiry to determine whether the terms of the Presidential Order included a particular

community. A State Government was entitled to initiate appropriate proposals for modification in cases where it was satisfied that modifications

were necessary and, if after appropriate enquiry, the authorities were satisfied that a modification was required, an amendment could be

undertaken as provided by the Constitution.

(emphasis added)

25. Then further in para 18 and 19 of the judgment the Court said:

18. These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let

into determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes

Order, except as contemplated by Article 341, is valid.

19. The Thandan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State

Government or, indeed, to this Court to embark upon an enquiry to determine whether a Section of Ezhavas/Thiyyas which was called Thandan in

the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order.

(emphasis added)

26. The Court said that if something has wrongly been included in the Scheduled Caste or Scheduled Tribe list, it is open to State Government to

forward its report to appropriate authority to consider, whether Scheduled Caste or Scheduled Tribe Order needs amendment by appropriate

legislature or not but until such amendment has been made it has to be obeyed. In para 21 of the judgment the Court said:

Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as

members of the Scheduled Castes and issue community certificates accordingly.

(emphasis added)

27. A similar issue has also been considered by Division Bench of this Court in Dr. Virendra Mohan Rai Khangar Vs. Union of India, and

following Bhaiyalal v. Harikishan Singh (supra), the Court in para 6 of the judgment said:

6. Of Course the instant case it is no body's case that the Khangar community has been recognised only in respect of certain parts or districts of

Uttar Pradesh and not in respect of the other parts. It appears that the President in notification specified the Khangar community recognising the

same as a scheduled caste for the purposes of Constitution in relation to the States of Madhya Pradesh, Rajasthan and Maharashtra. The State of

Uttar Pradesh has not been included in the aforesaid notification recognising the Khangar community as scheduled caste for the purposes of

Constitution. This can only be done in accordance with the provisions of Clause (2) of An. 342 and it is not competent for this or any other Court

to issue a writ of mandamus directing the Union of India to declare the Khangar community as scheduled caste in relation to Uttar Pradesh.

28. In Nityanand Sharma and another Vs. State of Bihar and others, the Court, in para 17 of the judgment, said:

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, District or region and its declaration is conclusive. The Court has no power to declare

synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste/tribe etc. It would thus be clear that for the

purpose of the Constitution, ""Scheduled Tribes"" defined under Article 366(25) as substituted under the Act, and the Second Schedule thereunder

are conclusive.

29. In *Prabhudev Mallikarjunaiah Vs. Ramachandra Veerappa and another*, , the Court said:

It is settled law that the Courts cannot give any declaration that the status with synonymous names of castes claimed by the party is conformable

to the names specified in the Presidential Notification issued under Article 341 of the Constitution.

30. In *Pankaj Kumar Saha Vs. Sub-Divisional Officer, Islampur and Others*, of the judgment, Court said:

6.....the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be a Scheduled Caste or Scheduled Tribe.

The Courts would only look into the notification issued by the President to see whether the name finds place in the notification?

(emphasis added)

31. I find above view reiterated by Apex Court in *Vinay Prakash and Others Vs. State of Bihar and Others*, , where it said:

6.....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.

32. In *A. Chinnappa Vs. V. Venkatamuni and others*, of the judgment the Court said:

3. A reading thereof would clearly indicate that the President may, with respect to any State or Union Territory, after consultation with the

Governor, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall, for the purposes

of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Under Clause (2) thereof

the Parliament has been empowered by law either to include in or exclude from the list of Scheduled Castes specified by the President under

Clause (1) of Article 341 any caste, race or tribe or part of or group within any caste, race or tribes. Once the Parliament by law includes in or

excludes from any race, caste, tribe, parts of or groups within any caste, race or tribes, the President thereafter shall have no power to vary by any

subsequent notification the said caste, race, tribe or part of or group within any caste, race or tribe.

33. Now looking to the entire issue from the angle as above, it is not disputed that petitioner belongs to ""Gond"" caste and is resident of District

Azamgarh. He, therefore, clearly falls in the Entry 6 of Order, 1967 as amended in 2003. The District Magistrate thus has no jurisdiction or

authority to embark upon himself to go into the question, whether Gonds are normally resident of Azamgarh or not since that jurisdiction is beyond

his competence. The only inquiry open to him is to find out whether petitioner belongs to Gond caste in one of the districts for which Gond caste is

declared to be Scheduled Tribe under notification dated 7.1.2003. Once the inquiry is in favour of the person who claimed caste certificate,

nothing more can be looked into to deny him status under the aforesaid notification.

34. In the present case, however, even otherwise the caste certificate issued to petitioner has never been cancelled. That being so, the entire

exercise undertaken by respondent-department so as to cancel appointment of petitioner is ex facie and patently illegal, unauthorized and wholly

without jurisdiction.

35. In the result, the writ petition is allowed. Impugned order dated 31.12.2007 is hereby quashed. Petitioner shall be entitled to all consequential

benefits. He shall be deemed to have joined service on the date when he submitted his joining report with respondents and is entitled to all

attending benefits including arrears of salary etc. Since he has been subjected to an avoidable litigation which has been forced upon him causing

otherwise harassment to him, in my view, he is also entitled to costs, which I quantify to Rs. 10,000/-.