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PANKAJ KUMAR SAHA

v.

THE SUB-DIVISIONAL OFFICER, ISLAMPUR AND ORS.

FEBRUARY 12, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Scheduled Castes and Scheduled Tribes order, 1950/Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976:

C

Issue of SC/ST certificate—State of West Bengal—Sunri(excluding Saha) a Scheduled Caste—Saha caste expressly excluded from Sunri in the notification issued by the President—Conclusive of—Court would only look into the notification issued by the President to see whether the name finds a place in the notification—Since it is not there, the Certificate issued is unconstitutional—Constitution of India, Articles 341(1), 366(24).

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Nityanianda Sharma and Anr. v. State of Bihar & Ors., JT (1996) 2 SC 117, referred to.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 4680 of 1996.

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From the Judgment and Order dated 25.4.94 of the Calcutta High Court in appeal from Original Order T. No. 2878 of 1992.

S.B. Sanyal and Ranjan Mukherjee for the Petitioners.

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The following Order of the Court was delivered :

This Special Leave Petition is filed against the order of the Calcutta High Court dated April 25, 1994 made in Original Order T. No. 2878/92.

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Petitioner's brother Amal Kumar Saha was granted a Scheduled Caste certificate on January 15, 1982 and the petitioner was granted a certificate on January 22, 1982. The certificate granted to the elder brother was cancelled on December 20, 1986, said elder brother approached the High Court by way of writ application under Article 226 of the Constitution which was registered as C.O. No. 7629 of 1988. The said writ application

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was disposed of directing petitioner's brother to file a representation. Even

the representation of the brother was rejected by order dated December 18, 1991. The petitioner was served with a notice dated January 6, 1992 calling upon him to show cause as to why the certificate granted to him would not be cancelled. The petitioner appeared before the authority and filed his show cause. Finally, by order dated July 9, 1992, the certificate was cancelled. The petitioner's elder brother challenged the order of cancellation of his certificate by filing a writ petition, which is still pending. But the petitioners' writ petition, challenging the order of cancellation was dismissed by the learned single Judge on August 27, 1992 and the Division Bench dismissed the appeal *in limine* on April 25, 1994. Hence the special leave petition.

When the matter had come up on the last occasion, we directed the learned counsel to produce the Presidential notification published under Art. 341(1) of the Constitution which has been made part of the record. It discloses that as regards the State of West Bengal, item No. 57 Sunri (excluding Saha) has been declared to be Schedule Caste. Admittedly, the name of the petitioner has been described as Saha. He claimed the status as Sunri, a Scheduled Caste.

Article 366(24) defines "Scheduled Castes" to mean such castes, races or tribes or part of or groups within such castes, races or tribes as are deemed under Article 341 to be Schedule Castes for the purpose of this Constitution. Article 341(1) provides that the President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, 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 Urban Territory, as the case may be.

It is seen that in exercise of the said power, the President had issued the public notification which is called Scheduled Castes and Scheduled Tribes Order, 1950 and has been amended in 1976 after the Scheduled Castes and Schedule Tribes Orders (Amendment) Act, 1976 was made. As indicated earlier, Sunri (excluding Saha) is a Scheduled Caste for the purpose of State of West Bengal. The petitioner admittedly bears the name of Saha. The authorities found as a fact that for over a century the petitioner's family are Saha by caste. The president after consultation with the Governor, has excluded Saha, a liquor business community as

- A Scheduled Caste. Though some scheduled Castes by name Sunri adopted tapping as profession, they suffer from untouchability while Sahas, liquor business community like Sethi Balija, Edigal or Gowda in Andhra Pradesh, are not Scheduled Castes. In the notice given to the petitioner details were given and the record produced before the authorities were considered by the competent authority which held that Sahas are not the Scheduled Castes and that, therefore, they cannot be considered to be Sunris. In a recent judgment in *Nityananda Sharma & Anr. v. State of Bihar & Ors.*, JT [1996] 2 SC 117, a Bench of three Judges had examined the scope of judicial review and power of the court to go into the question of synonyms of the caste.

- C It is now settled law that though evidence may be admissible to the limited extent of finding out whether a caste which claims the status as Scheduled Caste or Tribe was in fact included in the Presidential notification as amended under 1976 Act, 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? Saha caste is expressly excluded from Sunri, a Scheduled Caste notified in the notification issued by the President in relation to the State of West Bengal which is conclusive. The certificate issued to the petitioner is, therefore, clearly unconstitutional and a fraud on the Constitution. The petitioner cannot be considered to be a Scheduled Caste.

Accordingly the Special Leave Petition is dismissed.

G.N.

Petition dismissed.