

BHAIYA RAM MUNDA

v.

ANIRUDH PATAR & ORS.

August 14, 1970

[J. C. SHAH AND V. BHARGAVA, JJ.]

Constitution (Scheduled Tribes) Order, 1950, Part III—When evidence admissible for finding the scope of an entry in Order—Some sub-tribes under an entry included—Whether other sub-tribes deemed excluded—Effect of admission by member of Scheduled Tribe that he was not a member of the tribe.

In Part III of the Constitution (Scheduled Tribes) Order, 1950, issued by the President of India under Art. 342, *Munda* is specified as a scheduled tribe, but not *Patar*. The first respondent was a *Patar*. He was declared elected to the Bihar Legislative Assembly from a scheduled tribes constituency. The appellant, who was an unsuccessful candidate, filed an election petition for setting aside the election on the ground that the first respondent was not a member of a scheduled tribe. The High Court dismissed the petition holding that the first respondent was a *Munda* and was hence a member of a scheduled tribe.

In appeal to this Court,

HELD : (1) Evidence is admissible for the purpose of showing what an entry in the Presidential Order was intended to mean, but not so as to modify the Order by including other tribes. Since the first respondent's case was not that *Patars* are a distinct community who are regarded as *Mundas* but that *Patars* are *Mundas*, evidence may be given to show that the entry *Munda* includes *Patars*. [814 B-C; 815 A]

B. Basavalingappa v. Munichinnappa, [1965] 1 S.C.R. 316, *Bhaiyalal v. Harikishan Singh & Ors.* [1965] 2 S.C.R. 877, *Laxman Siddappa Naik v. Kattimani Chaniappa Jamappanna & Ors.* [1968] 2 S.C.R. 805 and *Dina v. Narayan Singh & Anr.* C.A.No. 1622/67 dt. 21-5-1968, referred to.

(2) Whether a particular person is a member of a scheduled tribe so declared by the President is essentially a question of law. Though an admission made by him expressly or by implication that he is not a member of a scheduled tribe is evidence against him in an election petition, the evidence is not conclusive. [808 B-C]

(3) If a member of a scheduled tribe, transfers property by a deed in which he describes himself to be not a member of the scheduled tribe in order to avoid refusal of registration under s. 46 of the Chota Nagpur Tenancy Act, he will not, on that account, be disentitled to claim the status of a member of scheduled tribe. It could not be said, on that ground alone, that the transferor was not a member of a scheduled tribe or was estopped from setting up that status. [808 D-E]

(4) The evidence in the case established that *Patars* are a sub-tribe of *Mundas* and that they are not different from *Mundas*. [813 F-G]

(5) If *Patars* are *Mundas*, because some sub-tribes of *Mundas* are

- A enumerated in the Presidential Order and others are not, no inference will arise that those not enumerated are not *Mundas*. Merely because *Patars* are not specifically mentioned in the Presidential order, they cannot be on that account alone be excluded from the general heading of *Munda*. [813 G-H]

- B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2039 of 1969.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated August 19, 1969 of the Patna High Court in Election Petition No. 9 of 1969.

- C *D. Goburdhun and R. Goburdhun*, for the appellant.

K. K. Sinha, S. Thakur Prasad and S. S. Jauhar, for respondent No. 1.

The Judgment of the Court was delivered by

- D **Shah, J.** At the "mid-term elections" held in January 1969 Anirudh Patar (the 1st respondent in this appeal) was declared elected to the Bihar Legislative Assembly from the Tamar Assembly Constituency No. 296 (Scheduled Tribes). Bhaiya Ram Munda—an unsuccessful candidate at the election—applied to the High Court of Patna for an order setting aside the election on the plea that the 1st respondent was not a member of a scheduled tribe and was on that account not qualified under s. 5 of the Representation of the People Act, 1951 to be chosen to fill a seat in the Legislative Assembly of Bihar from a reserved constituency for scheduled tribes. The High Court dismissed the petition holding that the 1st respondent was a member of a Scheduled Tribe called "Munda" specified in Part III of the Constitution (Scheduled Tribes) Order, 1950 issued in exercise of the powers under Art. 342 of the Constitution. Bhaiya Ram Munda has appealed to this Court under s. 116A of the Representation of the People Act, 1951.

- G Section 5 of the Representation of the People Act, 1951 provides :

"A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State—unless—

- H (a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an

elector for any Assembly constituency in that State;

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Article 342 of the Constitution, insofar as it is relevant, provides :

“(1) The President may with respect to any State or Union territory, . . . by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

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(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

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In exercise of the powers conferred by Art. 342, the President issued an Order called the Constitution (Scheduled Tribes) Order, 1950 which by the second clause provided :

“The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities specified in Parts I to XII of the Scheduled to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.”

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In the Schedule the names of certain tribes are set out, and in Part III under the heading the State of Bihar are designated certain tribes. The tribes designated in Part III are deemed to be Scheduled Tribes throughout the State of Bihar. *Mundas* does but *Patar* does not occur in Part III. The 1st respondent contended that *Patars* are *Mundas*, and that it is only non-*Mundas* who call the various exogamous groups belonging to the tribes residing generally in Singhbhum and the adjacent area and belonging to various *kilis* as *Mundas*, or *Pator Mundas*, *Mahali Mundas*, *Tamarias*, *Bunduars* and *Marang Mundas* and others. He contends that he does not cease to be a *Munda* merely because his family name is *Patar*.

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The appellant raised two arguments in support of his petition—(1) that *Patars* are not *Mundas*, and (2) that even if

A *Patars* are *Mundas*, since the name of *Patar* has not be included in the Constitution (Scheduled Tribes) Order, 1950, Part III applicable to Bihar, he cannot be chosen to sit in the Assembly from the reserved constituency by merely calling himself a *Munda*.

B Considerable evidence oral and documentary was tendered before the High Court. In support of his case the appellant relied upon—(1) a sale deed executed by the 1st respondent on January 11, 1969 which recited that the 1st respondent did not claim the status of a member of a Scheduled Tribe; (2) entries in the revenue records and (3) oral evidence of witnesses who deposed that the 1st respondent was not a *Munda*.

C In support of his case the 1st respondent relied upon—(1) a judgment of the High Court of Patna declaring that *Patars* are *Mundas*; (2) *Khatian* entries in which *Patars* were entered as *Mundas*; (3) a certificate dated July 15, 1941 given by Rai Bahadur Sarat Chandra Roy (many years before the date on which the dispute arose) certifying that one Kshetra Mohan Patar son of Gobardhan Patar of village Kumar Hapa, thane Tamar, District Ranchi belonged to the *Patar* (*Munda*) tribe; and (4) oral testimony of the witnesses who deposed that the 1st respondent was a *Munda*.

E The name of the first respondent was entered in the voters list as a member of a Scheduled Tribe. The first respondent stood as a candidate for election to the Bihar State Legislative Assembly in 1962, and was elected from the Scheduled Tribe constituency. Nomination was filed by him at that election as a *Patar*. In 1967 too the first respondent stood from the Tamar Scheduled Tribe Constituency for election to the Bihar Legislative Assembly but he was defeated. It also appears from the record that Mr. Jaipal Singh who was also a *Patar* was elected as a member of the Parliament to a reserved seat from a constituency in the Bihar State was a member of the Scheduled Tribe.

G The first question to be determined is whether *Patars* are not *Mundas*: The appellant placed strong reliance upon a sale deed executed by the first respondent on January 11, 1969 (few days before the elections) conveying property and declaring therein that the first respondent was not a member of any Scheduled Caste or backward community. Under s. 46 of the Chhota Nagpur Tenancy Act VI of 1908 without the sanction of the Deputy Commissioner the members of the Scheduled Tribes cannot transfer their lands. It is common ground that to the area of the Tamar Constituency that Act applied. A deed evidencing sale of land presented for registration by a member of a Scheduled Tribe

could not be registered unless the sale was sanctioned by the Deputy Commissioner. According to the first respondent it was the vendee who inserted into the deed the statement in order to avoid refusal of registration by the authorities. Assuming that the statement was incorporated in the deed with the consent of the first respondent no estoppel arises against him. Whether a particular person is a member of a Scheduled Tribe so declared by the President under Art. 342 of the Constitution is essentially a question of law. Though an admission made by him expressly or by implication that he is not a member of a Scheduled Tribe is evidence against him in an election petition, the evidence is not conclusive.

Khatian entries Exts. I/a and I/b show that sale deeds executed by *Patars* were admitted to registration and mutation entries were posted pursuant thereto. There is no evidence whether in respect of those sale deeds permission of the Deputy Commissioner was taken before they were executed. It is not possible to infer from the revenue entries that sanction of the Deputy Commissioner was not obtained or that *Patars* are not *Mundas*. Granting that the prohibition contained in s. 46 of the Chhota Nagpur Tenancy Act was violated by a member of a Scheduled Tribe, he will not on that account be disentitled to claim the status of a member of a schedule tribe. The transactions of sale may be void, but it cannot be said, relying on that ground alone, that the transferor was not member of a Scheduled Tribe or was estopped from setting up that status. Exts. 1(g) and 1(h) are sale deeds executed by *Mundas* and sanction of the Deputy Commissioner was obtained before execution of the sale deeds. Exhibits 4 and 4(a) are certified copies of two *raiya* *Khatians* in which the caste of the tenants who were *Patars* is mentioned as *Patar*, but from that also no inference arises that they are a tribe distinct from *Mundas*.

The oral evidence led on behalf of the appellant is unconvincing. Faud Singh Munda P.W. 1 asserted that *Patras* are not a branch of the *Munda* Tribe, but they are a separate caste. According to him *Patars* could convey their property without the permission of the Deputy Commissioner, that *Pahans* perform ceremonies in the families of *Mundas*, but *Brahmins* assisted by barbers perform religious ceremonies in the families of *Patars*; that *Mundas* do not offer *Pind* in *Shradh*, *Patars* do offer; that the Sun is the supreme deity for the *Mundas* but *Patars* worship Rama and Krishna; and that *Mundas* celebrate *Sarbul* festival, but *Patars* do not. In cross-examination he stated that he has never attended any *Patar* marriage ceremony or *Shradh* and that he had not seen any *Patar* offering any *Pind* but had only heard about it. The witness was unable to say how *Patars*

- A performed the *Puja*. It appeared that he had not much information even about *Munda* customs and ceremonies.

The statement of Gandharb Singh Munda P.W. 2 in examination-in-chief was similar to the testimony of P.W. 1. In cross-examination the witness stated that *Mundas* were not Gonds but they were "a separate caste" and that he had never attended a *Patar* marriage ceremony and was never invited by any *Patar* on the occasion of *Shradh*. He admitted that *non-Mundas* also celebrated *Sarbul*. But according to him *Patars* from other villages came to worship goddess *Diuri* of his village which was worshipped by *Mundas*. He did not appear to be competent to speak about the customs and usages of *Patars* as distinguished from those of *Mundas*. The witness did not know that those who are generally called *Mundas* are in reality *Komput Mundas*.

Sudhir Kumar Choudhury P.W. 4 (who is a *Brahmin*) stated that there were *Mundas* in Tamar villages; that his next door neighbour was a *Munda*; and that *Brahmins* performed the marriage and *Shradh* in the families of *Mundas*. He stated that all the deities who are worshipped by Hindus are worshipped "in the family of the first respondent" and that marriage and *Shradh* ceremonies are performed in the family of the first respondent in the same way as they are performed in Hindu families. The witness admitted that he had not personally seen the performance of *Puja* of Rama and Krishna in the house of the first respondent. The High Court observed that the answers given by the witness in his cross-examination indicated that he had no familiarity with the customs of *Mundas*.

Abhimanyu Singh Munda P.W. 5 stated that the first respondent was a *Patar* by caste and the customs of marriage and *Shradh* amongst the *Mundas* and *Patars* were different. In cross-examination he said that in the area within the Tamar Police Station *Mundas* speak *Mundari* whereas *Patars* speak *Panch Pargania*. This was however, plainly contrary to what the other witnesses had stated. He said that there was only one family of *Patars* in his village; that he was invited by that family on the occasions of marriage and *Shradh*; and that he did not know the *Gotra* of that family. He further stated that all the scheduled tribes of Chhota Nagpur drink *Hanria* but the witness denied that the *Patars* drink *Hanria*. In the view of the High Court, reliance could not be placed upon the testimony of this witness. We see no reason to disagree with it.

P.W. 6 is the appellant himself. He repeated what was stated by P.W. 1, P.W. 2 and P.W. 5. He asserted that *Patars* do not belong to a Scheduled Tribe. He admitted however that

he had never attended any ceremony of marriage or *Shradh* A
or any other function in a *Patar* family and that he could not
competently speak about the ceremonial customs of *Patars*. He
also denied that the son of P.W. 1 was an employee of the *Seva*
Mandal, a fact which was admitted by P.W. 1.

The first respondent has relied in support of his case upon B
Exts. A, B, B/1 & C. Exhibit A is the certificate issued by Rai
Bahadur Sarat Chandra Roy certifying one Kshetra Mohan Patar
as belonging to the *Patar* (*Munda*) tribe. Exhibits B and B/1 are
entries in the *Khatian* and Ext. C is the judgment delivered by
Ahmad, J., of the Patna High Court in a case relating to the
acceptance of *Patars* as *Mundas*.

Kshetra Mohan Patar R.W. 1 stated that there were several C
sects amongst the *Mundas* and *Patar* was one of such sects. The
witness further stated that *Pahans* officiate as priests at the time
of marriage in the families of all the sub-castes of *Mundas*
and *Brahmins* do not officiate as priests on such occasions; that D
Patars also bury the bones of such dead bodies which are burnt
at a place called *Sasan* or *Hargaddi* and that they also
worship the Sun and other deities worshipped by *Mundas*. He
also spoke about the inter-marriages between *Patars*, *Bhumis* and
Mahalis which were sub-castes of *Mundas*.

Daroo Pahan R.W. 2 is not a *Patar* but a *Munda*. He stated E
that *Khangars* and *Patars* are sub-castes of *Mundas*, that some
boys of *Mundas* of his village had married *Patar* girls, that those
boys with their *Patar* wives were living in his village. He also
said that *Puja* was performed by his brother, when *Barats* of
Mundas returned to the village with *Patar* wives. He gave details
about the names of some of the *Patar* girls married to *Munda*
boys in his village. F

Jamir Munda R.W. 3 said that he had married a *Patar* girl;
and that there were two main branches of *Mundas*—one consist-
ing of *Patars*, *Khangars* and *Mahalis* and the other consisting
of *Babuans*, *Mundas* and *Kol Mundas*, and except *Babuans* others
inter-married among themselves. He stated in cross-examination G
that *Patar* is merely a title and not a sub-caste.

Khudi Ram Munda R.W. 4 stated that there were two main
branches of *Mundas*—one consisting of *Mundas*, *Patars*,
Khangars and *Mahalis*, and the other consisting of *Mankis*,
Thakurs, *Babuans* and *Mundaris*; that *Pahans* officiated as priests H
on the occasion of marriages in the family of *Patars* and *Patars*
also performed *Sarna Puja* and celebrated *Sarbul* festival; that
his nephew had married the daughter of a *Patar* and that his

- A present wife was also a *Patar*. In cross-examination he admitted that those *Patars* who were rich called *Brahmins* to perform Puja etc. on ceremonial occasions.

- B Ram Jatan Patar R.W. 5 stated that in the *Khatian* the caste of his father was entered as *Patar Munda*. He further stated that the daughter of his nephew Satya Narain was married with the nephew of Khudi Ram Munda.

- C Raghunath Munda R.W. 6 stated that there were two branches of *Mundas*—*Mundas* and *Patar Mundas*. He further stated that the customs followed by *Patars* on the occasion of marriages in their families were the same as followed by *Mundas*; that *Patars* as well as *Mundas* buried the bones of the dead at *Sasandril*, that *Pahans* generally officiated as priests at the ceremony of marriage among *Mundas* and *Patars* but those who were rich also called *Brahmins* to officiate as priests on those occasions; that the main festivals of *Mundas* as well as *Patars* were *Sarbul* and *Buru Puja*; and that *Mundas* and *Patars* both spoke *Mundari*.

Bahadur Patar R.W. 7 gave similar testimony.

- E Harihar Singh Munda R.W. 9 supported the testimony of witnesses R.Ws. 3 & 4. He spoke about the various sects of the *Mundas* and also about the prevalence of some customs relating to marriages and other ceremonies of *Patars* and *Mundas*.

- F Kumar Amarendra Nath Sah Deo R.W. 10 stated that in the marriages in the families of *Mundas* and *Patars* generally *Pahans* officiated as priests; that those who were rich also invited *Brahmins* on the occasion and there were inter-marriages between *Patars* and other branches of the *Mundas*. He also spoke about the custom of burying the bones of the deceased members in the families of *Patars*.

- G The first respondent R.W. 11 stated that his name was entered in the voters' list prepared in 1960, that he was elected to the Bihar State Legislative Assembly in the elections held in 1962 and that he lost in the elections of 1967. He also corroborated the statements of his witnesses relating to the customs of *Mundas* and has asserted that *Patars* are *Mundas*.

- H Dr. Sachchidananda R.W. 8 is a renowned anthropologist. He has made a study of tribal culture in Bihar and has written several books on anthropology. In his book "Profiles of Tribal Culture in Bihar" and in his articles on *Mundas* in Bihar he has stated that *Patars* are *Mundas*. He confirmed that opinion on the basis of anthropological studies.

Dr. Sarat Chandra Roy in his publication "Mundas and this Country" at p. 400 has observed : A

"The *Munda* tribe is divided into a large number of exogamous groups called *kilis*. According to *Munda* tradition, all the members of the same *kili* are descended from one common ancestor. But such a tradition may not be quite correct with regard to the original *kilis*. B
Though exogamous as regards the *kilis*, the *Mundas* are endogamous so far as other tribes are concerned. Thus, there can now be no valid marriages, according to *Munda* custom, between a *Munda* and the member of any other 'Kolarian' tribe, such as the *Santals*,"

Dr. Sarat Chandra Roy has then referred to the various sub-tribes known as *Bhumij-Mundas*, *Khingars* and observed : C

"In Parganas Bundu and Tamar, these *Khingar Mundas* are known as *Patar Mundas*, in parts of Kunti Thana as *Mahli Mundas*, in Singbhum as *Tamarias*, in Gangpur as *Bunduars* and in Pargana Balkaddi by the significant name of Marang Mundas." D

In his "Profiles of Tribal Culture in Bihar" Dr. Sachchidananda has said at p. 40 :

"The entire *Munda* tribe consists of an elder and younger branch, the *Mahali Mundako* and the *Kompat Mundako* respectively. The former are found mainly in Tamar Pargana of the Ranchi District and are also known as *Patar*. Ordinarily *Munda* or those belonging to the younger branch form the bulk of the *Munda* population. Both these branches are endogamous. The former are considered socially inferior to the latter." E
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The author then stated at p. 41 :

"In Tamar area the social stratification among the *Munda* has reached a developed form. Six distinct classes or castes may be distinguished. These may be grouped into two viz. (a) the Zamindars or landlords and (b) the tenants. In group A we have at the top, landlords called *Thakur* who hold above fifteen villages each. Next come *Manki* who are lesser landlords holding upto ten or eleven villages each. G
In group B are the *Mundari* who are *Munda* tenants. Intermarriage between *Mundari* and the above mentioned four classes is well nigh impossible due to great disparity in economic and social status. At the bottom H

- A of the *Munda* society in Tamar are the *Patar* who belong to the *Mahali-Mundako* branch of the tribe. Though they hold small bits of land there is no social intercourse between them and the upper five groups. Not only is intermarriage unthinkable but even water cannot be taken from the hands of a *Patar*."
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Patars are it appears regarded as the lowest in the social order amongst the *Mundas* but they are still *Mundas*.

- C In Encyclopaedia Mundarica by Rev. John Hoffmann in collaboration with Rev. Arthur Van Emelen, Vol. IX, at p. 2881 it is stated that "*Munda* is a name which has been given to the *Mundas* by the Hindus" and is exclusively used by all but the *Mundas* themselves. Under the heading *Munda* are given the names of different sub-tribes of the *Mundas* one of which is *Mahali*. At p. 2756 in the same book after the head "*Mahali*" it is said that a *Mahali* is a *Munda* of the elder branch. The author then proceeded to say that the *Mahalies* are also called *Tamadias* especially by Hindus and in Chota-Nagpur they are called *Khangars*. In Tamar they are called *Patars*. The *Mundari* they speak is characterized by a great number of vocal checks. They have practically all the clans (*kilis*) found amongst the *Mundas*.
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- E The evidence given on behalf of the first respondent is amply supported by studies made by distinguished anthropologists. The first respondent was without any objection recorded in the voters' list as a member of the Scheduled Tribe. He was elected in 1962 from a scheduled tribe constituency. He again contested the elections from that constituency in 1967 but he was defeated. It is only in 1969 when at the fresh elections that he contested the seat and was declared elected when an objection was raised that he did not belong to a scheduled tribe. On a consideration of all the evidence we are of the view that *Patars* are a sub-tribe of *Mundas* and that they are not different from *Mundas*.
- F

- G The alternative argument advanced by counsel for the appellant has also no substance. It is true that in Part III of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 issued under Art. 342 of the Constitution the name "*Munda*" is mentioned and similarly the names of other sub-tribes amongst *Mundas* are mentioned. Counsel for the appellant contended that if according to Dr. Sachchidanand Mahalis, Ho, Bhumijis, Asur, Baiga, and *Khangars* are *Mundas*, specific mention of some of those tribes in the Schedule Tribes Order clearly indicated that *Patars* who are not mentioned therein are not a Scheduled Tribe within the meaning of the Order. There is however no
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warrant for that view. If *Pataras* are *Mundas*, because some sub-tribes of *Mundas* are enumerated in the Order and others are not, no inference will arise that those not enumerated are not *Mundas*. We are unable to hold that because *Pataras* are not specifically mentioned in the List they cannot be included in the general heading *Munda*.

Decisions in support of the contention that the Courts cannot allow evidence to be taken for proving that certain classes of people though not expressly designated in the Presidential Order were intended to be covered by the Order may be briefly referred to. It may suffice to state however that it is not the case of the first respondent that *Pataras* are a distinct community, but that they should be regarded as *Mundas* because of the similarity of customs, religious beliefs, forms of worship and other social obligations.

In *B. Basavalingappa v. D. Munichinnappa*⁽¹⁾ the relevant facts were that M who was elected from a Scheduled Castes constituency claimed to belong to the *Bhovi* caste which was one of the Scheduled Castes mentioned in the Constitution (Scheduled Castes) Order, 1950 issued by the President under Art. 341 of the Constitution. In an election petition it was claimed that M belonged to the *Voddar* caste which was not mentioned in the Order and that on that account M was not entitled to stand for election from Scheduled Caste constituency. Evidence was led before the Election Tribunal that *Bhovi* was a sub-caste of the *Voddar* caste and as M did not belong to the *Bhovi* sub-caste he could not stand for election from the constituency. The High Court in appeal held that although *Voddar* caste was not included in the Order, yet considering the facts and circumstances in existence at the time when the Order was passed in 1950, the *Bhovi* caste mentioned in the order was the same as the *Voddar* caste. In appeal to this Court it was contended that the High Court was wrong in considering the evidence and then coming to the conclusion that the caste *Bhovi* mentioned in the Order was meant for the caste *Voddar* and that the Tribunal should have declined to allow evidence to be produced which would have the effect of modifying the Order issued by the President. This Court held that the evidence clearly showed that in 1950 when the Order was passed there was no caste in the then Mysore State which was known as *Bhovi* and the Order could not have intended to recognise a caste which did not exist. It was therefore necessary to find out which caste was meant by the use of the name *Bhovi* and for that purpose evidence was rightly recorded by the Tribunal and acted upon by the High Court. This Court accordingly confirmed the view of the High

- A** Court. The decision in this case lends no support to the contention that evidence is inadmissible for the purpose of showing what an entry in the Presidential Order was intended to mean.

- The next case in the order of sequence is *Bhaiyalal v. Harikishan Singh and Others.*⁽¹⁾ In that case an election to a State Legislature was challenged on the ground that the successful candidate belonged to the *Dohar* caste which was not recognised as Scheduled Caste for the district in question, and on that ground the successful candidate was not competent to stand for election. The Election Tribunal declared the election invalid and the finding was confirmed on appeal by the High Court. It was held by this Court that the plea that the appellant is not a *Chamar*, and as such, he could not claim the status of a *Chamar* claiming that he belonged to *Dohar* Caste which is a sub-caste of the *Chamar* caste and that an enquiry of the kind would not be permissible having regard to the provisions contained in Art. 341 of the Constitution. It was urged in that case that *Chamars* were recognised as a Scheduled Caste but not the *Dohar*. The successful candidate was, it was found, a *Dohar* and was not a *Chamar*. The Court declined to allow a plea to be raised that *Dohars* were in some areas recognised as a sub-caste of *Chamars*. The contention was plainly futile, once it was held that the candidate was not a *Chamar* in the constituency to which the Order related and *Dohars* were not a Scheduled Caste. The Court observed that in specifying castes, races or tribes under Art. 341 of the Constitution, the President had been expressly authorised to limit the notification to parts of or groups within the caste, race or tribe, and 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 the parts of the State where he is satisfied that the examination of the social and educational backwardness of the races, caste or tribe justifies such specification. On that view the Court upheld the decision of the High Court that the successful candidate who was a *Dohar* was not, in the Constituency from which the case arose a *Chamar* within the meaning of the Constitution (Scheduled Castes) Order, 1950.

- In *Laxman Siddappa Naik v. Kattimani Chaniappa Jamapanna & Ors.*⁽²⁾ an unsuccessful candidate for election to the Mysore Legislative Assembly for a seat reserved for a member of the Scheduled Tribes filed an election petition alleging that the other three candidates were *Bedars* a tribe not specified in Part VIII para 2 of the Constitution (Scheduled Tribes) Order,

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

(2) [1968] 2 S.C.R. 805.

1950. The successful candidate asserted that he was a *Nayaka* and the *Nayakas* were also called *Bedars*. The High Court held that there was no *Nayaka* in the area and successful candidate was a *Bedar*. This Court allowed the appeal and held that *Nayakas* were to be found not only in the districts of Mysore but also in Maharashtra and Rajasthan. "This tribal community was therefore wide-spread" and it was not possible to say that there was no *Nayaka* in the district to which the appellant belonged. A bare assertion by the election petitioner that the appellant was a *Bedar* did not suffice to displace the acceptance of the nomination paper or the claim of the appellant that he was a *Nayaka*.

In the present case it is not the contention of the first respondent that he was a *Patar*—member of a tribe which is not *Munda*, but he was recognized as a *Munda*. His case was that in his tribe he was as a *Munda Patar*.

Attention may also be directed to a recent judgment of this Court in *Dina v. Narayan Singh & Anr.*⁽¹⁾ In that case Dina Narnavare was declared elected to the Maharashtra Legislative Assembly from the Armori Scheduled Tribes constituency. His election was set aside on the application filed by the first respondent on the ground that Dina was not eligible to stand as a candidate from a reserved constituency. Dina had declared in his nomination paper that he was a member of the *Gond* (*Mana*) caste and the same was a Scheduled Tribe in Taluka Gadchiroli of District Chanda in the Maharashtra State and being a *Gond* though styled as *Mana* he was entitled to the privileges given by the Constitution (Scheduled Castes) Order, 1950. This Court on a consideration of the evidence came to the conclusion that there was no sub-tribe of *Maratha Manas* among the *Gonds*. It was found that the customs, manners, forms of worship and dress of the members of the *Maratha Mana* community were all different from the customs, manners, form of worship and dress of the *Gonds*. In that view the Court held that *Mana* community amongst the *Marathas* could not be regarded as *Gond* and the appellant was not entitled to stand for election as *Gond*. The decision clearly decides that the name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Order issued by the President, it may be shown that the name is included in the Order is a general name applicable to sub-tribes.

The appeal fails and is dismissed with costs.

V.P.S.

Appeal dismissed. H

(2) C. A. No. 1622 of 1957 decided on May, 21, 1968.