

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/A/2015/000827

Sultan Singh v. PIO, Sub Divisional Magistrate (Punjabi Bagh)

Important Dates and time taken:

| | | |
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| RTI: 16.09.2014 | SA: 03.06.2015 | Adjunct Order |
| Result: Directed to correct the certificates | | Decision: 07-09-2015 |

Parties Present:

1. Appellant is present. Mr. C. L. Meena and Mr. Kishori Lal UDC represent Public authority.

FACTS:

2 Appellant through his RTI application sought action taken report on his various applications enclosed with RTI. As no reply received from PIO & FAA, appellant approached the Commission.

Proceedings Before the Commission

3. Appellant is questioning why the name of the 'caste' has been changed from Chamar to Jatav, while issuing the caste certificates to Scheduled Castes. His complaint is that persons belonging to Chamar are not getting certificates with that caste, instead of that, they are certified as Jatav. Appellant wanted the reasons for the same. Respondent authority stated that by the order dated 27.07.2011 castes of Sumar/Chamar, Chuhra and Kanjar had been incorporated in the group of 'Jatav'. Prior to this circular, Sumar/Chamar, Chuhra and Kanjar were given certificate in their respective caste. After this circular they are getting certificates in name of Jatav caste. The CPIO stated that in 2012 a notification issued which clearly stated that Chamar group was replaced with Jatav.

4. The appellant questioned if they are deleted from Sumar/Chamar, Chuhra and Kanjar caste, what is their caste status and what should be name of their caste if they are not certified with those approved names. The SDM (Punjabi Bagh) does not have any information about this. The officer stated that Chamar being a derogatory word, it was deleted from the list of caste and now people belonging to Sumar/Chamar, Chuhra and Kanjar caste are being issued certificates in the name of 'Jatav'. Appellant also has presented several instances where Chamars are given Jatav Certificate. They have strongly objected to it.

5. Certifying a person as belonging to his particular caste is a very important aspect, which cannot be taken lightly. Especially when Constitution guaranteed certain reservations and privileges to backward classes by defining scheduled castes and scheduled tribes, the persons belonging to these castes cannot be denied with their caste certifications. There are several constitutional privileges provided for the backward classes, which are given on the bases of caste certificate. They are as follows:

Article 15(4) of Constitution Of India says: (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any **socially and educationally backward** classes of citizens or for **the Scheduled Castes and the Scheduled Tribes.**

Article 16(4) says: (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any **backward** class

of citizens which, in the opinion of the State, is **not adequately represented** in the services under the State.

The objective of the Constitution (85th Amendment) Act, 1995 was states as:

The Scheduled Castes and the Schedule Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November 1992, in the case of Indra Sawhney and others v Union of India and others, however, observed that reservations off appointments or posts under Article 16(4) of the Constitution is confined to initial appointments and cannot extend to reservation in the matter of promotion. The ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and Scheduled Tribes. Since the representation of the Scheduled Castes and Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and Scheduled Tribes. In view of the commitment of the Government to protect the interest of the Scheduled Castes and Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend article 16 of the Constitution by inserting a new clause (4A) in the said article to provide reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

By this amendment, following clause is added after Article 16(4).

"(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

Article 341. Scheduled Castes

- (1) 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 Union territory, as the case may be,
- (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People,

(1) Seats shall be reserved in the House of the People for (a) the Scheduled Castes; (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and (c) the Scheduled Tribes in the autonomous districts of Assam

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

6. Article 332 provides similar reservations in legislative Assemblies of states. Article 366 defined 'Scheduled Castes' under (24) Scheduled Castes means such cases, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution;

7. As per the Constitution (Scheduled Castes) (Union Territories) Order, 1951, C.O. 32 in Schedule 1, pertaining to Delhi, at point 10 listed the castes: Chamar, Chanwar Chamar, Jatava or Jatav chamar, Mochi, Ramdasia, Ravidasi, Raidasi, Rehgarh or Raigar, at point 11 Chohra (Sweeper), at 12, Chuhra are included in the list of Schedule Castes. This order is made by the President in exercise of powers conferred by clause (1) of Article 341 of the Constitution as amended by the Constitution (First Amendment) Act, 1951.

8. This order specifically stated that subject to the provisions of this order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in [Parts I to III] of the Schedule to this Order shall, in relation to the [Union Territories] 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.

9. Thus under Article 341 (1) President by notifications for States and Union territories declares the Schedule Castes, and only by law by Parliament can include in or exclude from any caste. Once President notified it the Order remain in force as the list of the Scheduled

Castes. In Delhi, the order of the President (1951) gives the list of Scheduled Castes, which are deemed to be the Scheduled Castes according to Article 366(24) definition.

Chamars

10. Author Chandel, M. P. S. [(1990). *A Social Force in Politics: Study of Scheduled Castes of U.P.* Mittal Publications. p. 51. ISBN 9788170991939] has explained as follows:

Jatav, also known as **Jatava/ Jatiya/ Jatba/ Jatoi** is a social group that in India are considered to be a part of the Chamar caste, Dalits, who are now classified as a Scheduled Caste under modern India's system of positive discrimination, as discussed in.

11. Singer, Milton; Cohn, Bernard S., eds. (2007). *Structure and Change in Indian Society*. pp. 216–217 stated:

In the early part of the twentieth century, the Jatavs attempted the process of sanskritisation, claiming themselves to be historically of the kshatriya varna. They gained political expertise by forming associations and by developing a literate cadre of leaders, and they tried to change their position in the caste system through the emulation of upper-caste behavior. As a part of this process, they also claimed not to be Chamars and petitioned the government of the British Raj to be officially classified differently: disassociating themselves from the Chamar community would, they felt, enhance their acceptance as kshatriya. These claims were not accepted by other castes and, although the government was amenable, no official reclassification as a separate community occurred due to the onset of World War II.

12. It has also been suggested that the Chamars and Jats inter-married and formed the Jatavs as mentioned in Lynch, Owen M. (1969). *The Politics of Untouchability*. New York: Columbia University Press. p. 30. OCLC 31520. It is sometimes said that they are descendants from the marriage of Jats with Chamars.

13. The Chamar is one of the Dalit communities, who are classified as a Scheduled Caste. They are found mainly in the northern states of India and in Pakistan and Nepal. Ramnarayan Rawat posits that the association of the Chamar community with a traditional occupation of tanning was constructed, and that the Chamars were instead historically agriculturists (Yadav, Bhupendra (21 February 2012). "Aspirations of Chamars in North India". Chennai,

India: The Hindu. Retrieved 2013-01-14). According to the 2001 census of India, Chamar Population in Delhi is 893384 and their percentage is 6.45%. Chamars who have adopted the weaving profession and abandoned tanning and leathercraft, identify themselves as Julaha Chamar; R. K. Pruthi suggests this is in the hope that they might in future be considered as Julaha by other communities in the future.. They believe that leatherwork is "degrading" when compared to weaving (Pruthi, R. K. *Indian caste system*. Discovery. p. 189.)

14. The 1st Chamar Regiment was an infantry regiment formed by the British during World War II. ["Orders of Battle - 27/2 Punjab Regiment [British Commonwealth]" *orders of battle.com*.] The Chamar Regiment which was involved in the Pacific War Japanese front and was awarded the Battle Honor of Kohima for their distinguished role in the book, *Battle of Kohima*. The Regiment was disbanded in 1946. Recently in 2011, several politicians have demanded that the Chamar Regiment be revived. Notable people among this caste are founder of Bahujan Samaj Party, Kanshi Ram, Former Deputy Prime Minister of India, Jagjivan Ram, former Chief Minister of UP, Mayawati, former Speaker Meira Kumar, and Mohinder Singh Kaypee, MP from Jalandhar.

15. Whether Chamar and Jatav castes are one and the same was subject matter of consideration in a case **Kishorilal Hans vs Raja Ram Singh & Ors** decided by Supreme Court in 30 November 1971, by Justice AN Grover, (1972 AIR 598, 1972 SCR (2) 632). In this case 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 items 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. 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 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.[642E] 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.*** [1965] 2 S.C.R. 877 made observations repelling the contention that under Article 341 of the Constitution the president was not authorised to limit the notification to parts of a State. [644 C]

16. 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](#) [1965] 1 S.C.R.316 was referred 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]

17. In view of the above discussion, it can be concluded that Chamar case cannot be equated with Jatav, and persons belonging to caste of Chamar cannot be certified as Jatavs. The Constitutional provisions clearly indicate that there cannot be any changes in the list of castes, sub-castes and other entries in the list of Scheduled Castes as ordered by the President under the Constitutional authority.

18. Article 338(9) of the Constitution says the Union and every State Government shall consult the Commission (National Commission for Scheduled Castes) on all major policy matters affecting Scheduled Castes. This means that the Delhi Administration cannot alter the Order of the President referred above or delete from or include in the list any caste that was already notified without consulting the National Commission for Scheduled Castes and following the process prescribed by the Constitution.

18. The Cabinet of the Government of National Capital Territory of Delhi on 27.7.2011 decided as follows: the Council of Ministers deliberated on the issue and decided that all such references to the caste names mentioned in this order which have derogatory connotation

should be removed forthwith while issuing certificates to the applicants and Government of NCT of Delhi should also move the Ministry of Home Affairs GOI to carry out suitable amendments in this order so as to remove all words in the caste names which have derogatory connotation attached to the reference to caste in this order. The Cabinet approved the following amendment be carried out in caste names in 'The Constitution (Scheduled Castes) (Union Territories) Order, 1951':

- i. At serial number 8, the word 'Bhangi' may be substituted with "Balmiki",
- ii. At serial number 10, the word "chamar/chanwar" may be deleted.
- iii. At serial number 12, the word "chuhra" may be deleted,
- iv. At serial number 20, the work "kanjar" may be deleted.

19. The Cabinet also decided that pending amendment of the Constitution (Scheduled Castes) (Union Territories) Order, 1951 the deputy Commissioners of the districts be directed to take necessary steps while issuing case certificates to the applicants. The Commission notes that no record reflecting the consultation with the National Commission for Scheduled Castes was shown to the Commission.

20. By order No. F Cabinet Note/Balmiki/2011/670-709 dated 9.8.2011 issued by Revenue Department, vide which the usage of all caste names having derogatory connotation was ordered to be stopped while issuing caste certificates.

23. Realising that unless the amendment is made to the Constitution (Scheduled Castes) (Union Territories) Order, 1951 by the Union Government through Presidential Order, they cannot delete chamars etc from the list of castes under SCs, the Council of Ministers, Government of Delhi vide Cabinet Decision No. 2009 dated 16.4.2013 has reviewed the cabinet decisions No. 1792 dated 25.7.2011 and No. 1960 dated 21.11.2012 and decided to restore the original position with respect to the nomenclatures of the Castes as per 'the Constitution (Scheduled Caste) (Union Territories) Order, 1951 (C.O. 32). On 18.4.2013 the latest Cabinet Decision was circulated to various offices. The appellant has shown some of certificates issued by the respondents that their caste was 'jatav' while in fact they were 'chamars'.

24. The cabinet in 2011 has noted in its decision that certain nomenclatures like Bhangi, Chamar, Chuhra and Kanjar have acquired derogatory connotations in the public mind and it was necessary to change the same to more appropriate nomenclature which do not carry stigma. In doing so, the Government has, in fact removed these names from the lists of Scheduled Castes, without following the procedure prescribed by the Constitution. Because

they have not provided alternative names in place of names which they felt derogative, there was a serious injustice to Chamars etc, as they were not getting certificates, which they were entitled to under the Constitution of India.

25. Though Cabinet understood the serious lapse in the earlier decision and reversed it, it appears that the latest information did not percolate to all offices, because of which they continued to issue certificates denoting the caste of Chamars as Jatavs, which is questioned in this second appeal. At present, there is no proposal to amend the Presidential Order on Scheduled Castes. Hence there is a Constitutional obligation on the Revenue department to certify 'chamars' as belonging to caste of 'chamars' only. The then Chief Minister (Ms Sheila Diskhit) and the Government of NCTD has ignored the Constitutional mandate and fact that they have no power to amend the list and names of castes among the Scheduled Castes. Though the same Government have realized this Constitutional irregularity, but after realizing the mistake, none took sufficient measures to instruct the revenue department to take back the wrong certificates and replace them with corrected certificates. In the result several hundreds of holders of caste certificates are left to their fate without a remedy, as they are not in a position to use the certificates at required institutions.

26. The Commission directs the Deputy Commissioner of Revenue Department Head Quarters to explain the appellant and this Commission:

- a. what measures they have taken to correct the unconstitutionally given caste certificates to Chamars as "Jatav"s etc., since 2011 till today,
- b. when do they start certifying the applicants with their original caste names, and
- c. how do they compensate the loss suffered by the applicants because of such issuance of wrong certificates,
- d. when they issue necessary instructions specifically directing the revenue officers to issue certificates in accordance with list concerning Delhi under the Constitution (Scheduled Castes) (Union Territories) Order 1951 and place that order in their official website, within 20 days from the date of receipt of this order.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Addresses of the parties:

1. The CPIO under RTI,
Sub Divisional Magistrate (Punjabi Bagh),
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2. Shri Sultan Singh,
H. No. A-112, Laxmi Park, Nangloi,
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3. The CPIO under RTI,
SDM (HQ), Revenue Department (HQ),
GNCTD, 5, Sham Nath Marg, Delhi-110 054.

4. The Deputy Commissioner,
Revenue Department Head Quarters,
GNCTD, 5, Sham Nath Marg, Delhi-110 054.