

**Court No. - 29**

**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1859 of 2020**

**Petitioner :-** Nayak Jan Seva Sansthan

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Krishna Mohan Misra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Munishwar Nath Bhandari, Acting Chief Justice**

**Hon'ble Rajendra Kumar-IV,J.**

Heard learned counsel for the petitioner and learned Standing counsel for the State.

This writ petition has been filed to challenge the order dated 15.07.2020 issued by the Additional Chief Secretary, Samaj Kalyan Anubhag-3, Government of Uttar Pradesh, Lucknow.

Learned counsel for the petitioner submits that competence to issue notification to identify the caste to fall to scheduled tribes lies with Parliament under Article 342 of the Constitution of India. A Notification was published in the Gazette on 08.01.2003 to declare certain caste to fall in the category of scheduled tribes for the State of U.P. The Notification aforesaid named the caste to fall in the category of scheduled tribes in the district of Maharajganj, Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh, Jaunpur, Ballia, Gazipur, Varanasi, Mirzapur and Sonbhadra. After the Notification aforesaid, the State Government issued an order on 15th July, 2020 in reference to the same caste and the district to fall in the category of scheduled tribes though the authority does not lie for it more so when there is substitution of the caste.

Coming to the impugned order dated 15th July, 2020, it is submitted that while naming the castes for 13 districts given in the Notification, para 3 of the impugned order further refers to the caste of Gond and their synonyms or sub-caste Nayak and

Ojha to be scheduled tribes. The aforesaid was not in the domain of the State Government rather they cannot tinker or substitute the Notification published in the Gazette under Article 342 of the Constitution of India.

The learned Senior Counsel, Sri Krishna Mohan Mishra has made a reference of the judgement of Apex Court in the case of **State of Maharashtra vs. Milind and others (2001) 1 Supreme Court Cases 4** where it was held that the State Government have no authority to even make interpretation of the Notification. The prayer is accordingly to set aside the order dated 15th July, 2020.

Learned Additional Advocate General, Sri Manish Goyal submits that the order impugned herein is in consonance to the Gazette Notification dated 08.01.2003. The necessity to issue the impugned order was due to the malpractices adopted by the person to take caste certificate fraudulently. It is despite the person not falling in one of the caste referred in the Gazette Notification published by the Government of India. After taking caste certificate fraudulently, they were using it for different purpose. Thus, to void aforesaid, the order dated 15th July, 2020 was issued. The aforesaid has wrongly been taken as an order either for interpretation or substitution of the Gazette Notification of Government of India. In any case, if this Court give direction to issue caste certificate in reference to the Gazette Notification dated 08.01.2003, State would have no objection but it may be made clear that the caste certificate may be issued after scrutiny so that those not following in any of the caste given in the Notification may not get the certificate. The prayer is accordingly to allow the State Government to make proper scrutiny of the application before issuance of caste certificate.

We have considered the rival submissions of parties and perused the record. It is not in-dispute that competence to issue Notification for caste to fall in the category of scheduled tribes lies with the Parliament under Article 342 of the Constitution of India. The Gazette Notification was issued on 08.01.2003 to notify certain caste to be scheduled tribes for 13 districts of the State of U.P.

In view of the aforesaid, the State Government was not required or was having competence to issue order either giving interpretation or substitution of the Notification. The order dated 15<sup>th</sup> July, 2020 shows reference of the caste and the district as per the Gazette Notification of Government of India but at the end of Para 3 of the impugned order, apart from the caste referred in the middle part of Para 3, further refers to the caste Gond or its synonyms / sub-caste Nayak and Ojha to fall in the category of scheduled tribes. The aforesaid was not permissible. In fact, the Government of U.P. should follow the Gazette Notification issued of the Government of India. In any case, the impugned order was issued to stop fraudulent act of persons in obtaining caste certificate. Thus, we may not have interfered in the order but looking to certain substitution in Para 3, it is set aside. However, with the clarity that while issuing caste certificate in favour of reserve caste candidate named in the Gazette Notification, the State of U.P. would be at liberty to make proper scrutiny of the application so that caste certificate may not be taken fraudulently.

With the aforesaid clarification, the writ petition is allowed.

**Order Date :- 13.8.2021 / Manoj**