

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (MS) No. 2303 of 2025

Itika Pande and Another Petitioners.

Versus

State of Uttarakhand
and others. Respondents.

Present:

Mr. C.K. Sharma, learned counsel for the petitioners.

Mr. Pradeep Hairiya, learned Standing Counsel with Mr. Devesh Ghildiyal, learned Brief Holder for the State.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. Before deciding this issue certain questions are to be framed, which has to be answered by the respondent-State. Since the issue pertains to the claim of Schedule Tribe certificates on the ground that the petitioners are residing in the area, which has been notified as a tribal area. Article 342 of the Constitution of India pertains to the Schedule Tribe, which read as under:

342. Scheduled Tribes

(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 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.

(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.

2. Thereafter, in exercise of the powers conferred under clause 1 of Article 342 of Constitution of India the president after consultation with the Government of the State of U.P. issued a

notification on 24.06.1967 and following communities were declared to be Schedule Tribe, which are as follows:

- (i) Bhotiya
- (ii) Buksa
- (iii) Jaunsari
- (iv) Raaji
- (v) Tharo

3. Section 25 of the U.P. Reorganization Act, 2000, pertains to the amendment of the Schedule Tribe order, which reads as under:

“25. Amendment of the Scheduled Tribes Order.—On and from the appointed day, the Constitution (Scheduled Tribes) Order, 1950, shall stand amended as directed in the Sixth Schedule to this Act.”

4. On perusal of these provisions and the amendment as carried out in the Constitution Schedule Tribe order 1950 five communities were declared to be tribal communities i.e. Bhotiya, Buksa, Jaunsari, Raaji and Tharo. The correct interpretation of these provisions would be that a person who belongs to these five communities are deemed to be Schedule Tribe.

5. Learned counsel for the petitioners submits that earlier in the erstwhile State of U.P. and now in the State of Uttarakhand large number of Schedule Tribe certificates have been issued, who are residing in the area declared to be a tribe. He submits that these community of Bhotiya, Buksa, Jaunsari, Raaji and Tharo has in fact has been categorized on the basis of the area and if a person is residing in the area declared to be an area on the basis of these communities then such person is entitled to get Schedule Tribe certificate.

6. In other words, what he wants to submits that if a particular person is residing in the area declared to be a tribal area, which has been declared to be a Schedule Tribe as per the aforesaid

Constitution Schedule Tribe Order 1967 is entitled to get Schedule Tribe certificate. In reference to this, he placed on record the RTI information giving the details of the persons, who are residing in the tribal area and have been granted Schedule Tribe certificates.

7. On perusal of the counter affidavit of respondent nos. 2 and 3, particularly in paragraph 3, it is stated that the Jaunsari community has been noted as Tribal Community (Schedule Tribe) and since the petitioners do not belong to the Jaunsari Community, therefore, they cannot be issued caste certificate of Schedule Tribe. It is further contended that merely residing within the geographical limits of what has been classified as Jaunsar does not entitle the petitioners to claim the benefit as Jaunsar Tribal Community and they must possess the sociological indicators and way of life of the said community.

8. On perusal of Article 342 of the Constitution of India as well as the notification dated 24.06.1967 it is very clear that only the community has been declared to be Schedule Tribe and not the area and is infact the mandate of Article 342 of the Constitution of India.

9. Now, the question is whether merely on the basis that a person is residing in the area is entitled to get the Schedule Tribe certificate, which according to the petitioners is declared to be a Tribal area. This submission as advanced by the learned counsel for the petitioners is completely against the mandate of Article 342 of the Constitution of India since the only community has been declared to be Schedule Tribe and not the area and as per 1967 order, the five communities as referred above have been declared to be a Schedule Tribe. Therefore, entitlement of certificate of Schedule Tribe is only depends on whether a particular person, who claims to be a Schedule Tribe should belongs to that

community of merely on the ground that such person is residing in that area can be the sole basis for issue of Schedule Tribe certificate.

10. Learned counsel for the petitioners Mr. C.K. Sharma submits that in the erstwhile State of U.P. as well as in the State of Uttarakhand large number of persons have been granted Schedule Tribe certificate merely on the basis that they are residing in the area. If it is so, then it is a very serious issue. Let a fresh affidavit be filed within a week by the State to explain on what basis the Schedule Tribe certificates are being issued whether on the basis of the residence or on the basis that a particular person belongs to these communities i.e. Bhotiya, Buksa, Jaunsari, Raaji and Tharo. While filing the affidavit they have to explain what would be the criteria for determination that a particular person belongs to the aforesaid community.

11. They may further disclose that how many persons have been granted Schedule Tribe certificates on the basis of the residence.

12. Put up this matter on 16.05.2025.

(Rakesh Thapliyal, J.)

02.05.2025

PR