SUPREME COURT OF INDIA

Anjan Kumar

Vs

Union of India and Others

Appeal (Civil) 6445 of 2000

(H. K. Sema and Dr. Ar. Lakshmanan, JJ)

14.02.2006

JUDGMENT

H. K. SEMA, J.

The appellant Shri Anjan Kumar is the offshoot of the wedlock between Shri Lakshmi Kant Sahay, District Gaya in the State of Bihar and Smt. Angela Tigga who belongs to Scheduled Tribe community of Oraon Tribe, village Pondi Potkona, Distt./Division Raigarh, State of Madhya Pradesh. By an order dated 7th August, 1992 Scheduled Tribe certificate was issued to the appellant by S.D.M., Gaya on the ground that the mother of the appellant Smt. Angela Tigga belongs to Oraon tribe which is recognised as a Scheduled Tribe in the State of Madhya Pradesh. The appellant appeared before the Civil Service Examination in 1991 conducted by the Union Public Service Commission claiming himself to be the Scheduled Tribe candidate. In the said examination he had passed the written test but could not qualify in the interview. He again appeared in the Civil Service Examination conducted by the Union Public Service Commission in the year 1992 and passed the written examination. In 1993 he was called for interview. The result of the successful candidates was published and he stood at 759th rank in order of merit. He was also allotted Indian Information Service Grade A. However, the appellant did not receive any final posting order, which had resulted in filing many representations to the Union of India. In one of representations dated 14th September, 1994 the appellant also stated that he belongs to Scheduled Tribe category and his sub-caste is Oraon. Having failed to receive any positive response from the respondents, he filed an Original

Application before the Central Administrative Tribunal, Principal Bench, New Delhi being O.A. No. 2291 of 1994, inter alia, seeking direction to the Union of India to allow the appellant to join training. In response to the notice issued by the Tribunal, the Union of India, by its letter dated 9th November, 1994, conveyed to the Tribunal that the appellant has not been brought up in tribal environment and that his father is a non-tribal and, therefore, he cannot be treated as a Scheduled Tribe. Further, the Union of India, as directed by the Tribunal, conducted the enquiry into the question whether the appellant belongs to Scheduled Tribe community and the enquiry was conducted by the Additional District Collector, Jaispurnagar, District Raigarh, Madhya Pradesh and the report was submitted on 26th June, 1995. The enquiry report obviously was against the appellant. After examining the enquiry report submitted as aforestated, the Tribunal ultimately dismissed the Original Application No. 2291 of1994 by order dated 12th December, 1995. Aggrieved thereby the appellant filed a Writ Petition being C.W.P No. 647 of 1997 before the High Court of Madhya Pradesh at Jabalpur, inter alia, challenging the enquiry report submitted by the enquiry officer on the allegation of violation of the principles of natural justice inasmuch as no opportunity of hearing had been accorded to the appellant. The learned single Judge of the High Court after perusing the records and the enquiry report, submitted by the enquiry officer, dismissed the Writ Petition by order dated 22nd January, 1999. The appellant thereafter carried an unsuccessful appeal before the Division Bench in L.P.A. No. 138 of 1999, which was dismissed by the L.P.A. bench on 3rd December, 1999. Hence, the present appeal by special leave. We have heard the parties at length.

The sole question calls for determination in this appeal is, as to whether the offshoot of the tribal woman married to non-tribal husband could claim status of Scheduled Tribe and on the basis of which the Scheduled Tribe certificate could be given.

It is contended by Mr. M.N.Krishnamani, learned senior counsel that the enquiry officer conducted the enquiry behind the back of the appellant and therefore, the learned single Judge as well as the Division Bench erred in law dismissing the petition/appeal by placing reliance on the enquiry report and the material collected during the course of the enquiry. He further contended that the marriage of mother of the appellant (Scheduled Tribe) and the father of the appellant (Kayastha) has been approved and accepted by the community of the village and the appellant has been transplanted into the Tribal community and therefore, he was entitled to the Scheduled Tribe certificate which was correctly granted. In this connection, he has referred to a Circular dated 4th March, 1975 issued by the Government of India, Ministry of Home Affairs on the subject 'Status of children belonging to the couple one of whom belongs to Scheduled Castes/Scheduled Tribes'. He particularly referred to the portion when a Scheduled Tribe woman marries a non-Scheduled Tribe man, the children from such marriage may be treated as members of the Scheduled Tribe community, if the marriage is accepted by the community and the children are treated as members of their own community. Such Circulars issued from time to time, being not law within the meaning of Article 13 of the Constitution of India, it would be of no assistance to the appellant on the face of the Constitutional provisions. Further, the facts of this case are however different with the facts in which the circular was sought to be clarified. Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or ex-communicated

from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to forward class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practiced by the tribals from time immemorial and accepted by the community of the village as a member of tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of Constitutional goal. It is not disputed that the couple performed court marriage outside the village; settled down in Gaya and their son, the appellant also born and brought up in the environment of forward community did not suffer any disability from the society to which he belonged. Mr. Krishnamani, learned senior counsel contended that the appellant used to visit the village during recess/holidays and there was cordial relationship between the appellant and the village community, which would amount the acceptance of the appellant by the village community. By no stretch of imagination, a casual visit to the relative in other village would provide the status of permanent resident of the village or acceptance by the village community as a member of the tribal community.

The 'tribe' has been characterized by Dr. Gupta, Jai Prakash in The Customary Laws of the Munda & the Oraon quoted by this Court in State of Kerala vs. Chandramohanan at 432 as under:

"Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e.g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organization in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans."

Bhowmik, K.L. in Tribal India: a profile in India Ethnology observed:

"Tribe in the Dictionary of Anthropology is defined as 'a social group, usually with a definite area, dialect, cultural homogeneity and unifying social organization. It may include several subgroups, such as sibs or villages. A tribe ordinarily has a leader and may have a common ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family or blood ties'."

The object of Articles 341, 342, 15(4), 16(4) and 16(4A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous Territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong.

In Kumari Madhuri Patil v. Addl.Commnr. Tribal Development this Court denounced the practice of persons claiming benefits conferred on STs by producing fake, false and fraudulent certificates:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate."

Similar view was reiterated in Director of Tribal Welfare, Govt. of A.P. vs. Laveti Giri . In the case of Punit Rai vs. Dinesh Chaudhary this Court at page 221 in para 39 observed as under:-

"39. A person in fact not belonging to the Scheduled Caste, if claims himself to be a member thereof by procuring a bogus caste certificate, would be committing fraud on the Constitution. No court of law can encourage commission of such fraud"

Further in Punit Rai's case (supra) in paragraph 27, this Court observed that:

"27. The caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage."

In the case of Valsamma Paul (Mrs.) vs. Cochin University and others 0 this Court again examined the entire gamut and came to the conclusion that the condition precedent for acquiring Scheduled Tribes Certificate one must suffer the disabilities - Socially, Economically and Educationally. The facts of that case are important and may be recited in a nutshell. Two posts of Lecturers in Law Department of Cochin University were notified for recruitment, one of which was reserved for Latin Catholics (Backward Class Fishermen). The appellant was a Syrian Catholic (a Forward Class). She married to Latin Catholic (Backward Class Fishermen) and had applied for selection as a reserved candidate. The University selected her on that basis and accordingly appointed her against the reserved post. Her appointment was questioned by another candidate by filing a writ petition praying for a direction to the University to appoint the petitioner in place of the appellant. The learned single Judge allowed the Writ Petition. On appeal being filed before the Division Bench concerning the important question of law a reference was made to the Full Bench. The Full Bench held that though the appellant was married according to the Canon Law, the appellant being a Syrian Catholic by birth (Forward Class), by marriage with the Latin Catholic (Backward Class Fishermen) is not member of that Class nor can she claim the status as a Backward Class by marriage. On an appeal being preferred before this Court against the decision of the Full Bench this Court after referring to various decisions of this Court upheld the Judgment of the Full Bench. This Court held in paragraphs 33 and 34 as under:

"33. However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or an other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognized by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nations's life by providing them opportunities and facilities.

34. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and R.Chandevarappa v. State of Karnataka 6 this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the

candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution."

In view of the catena of decisions of this Court, the questions raised before us are no more res integra. The condition precedent for granting tribe certificate being that one must suffer disabilities wherefrom one belongs. The offshoots of the wedlock of a tribal woman married to a non-tribal husband - Forward Class (Kayastha in the present case) cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. A person not belonging to the Scheduled Castes or Scheduled Tribes claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under the Constitution of India. The impact of procuring fake/bogus caste certificate and obtaining appointment/admission from the reserved quota will have far-reaching grave consequences. The meritorious reserved candidate may be deprived of reserved category for whom the post is reserved. The reserved post will go into the hands of non-deserving candidate and in such cases it would be violative of the mandate of Articles 14 and 21 of the Constitution of India.

The Scheduled Caste and Scheduled Tribe Certificate is not a bounty to be distributed. To sustain the claim, one must show that he/she suffered disabilities - socially, economically and educationally cumulatively. The concerned authority, before whom such claim is made, is duty bound to satisfy itself that the applicant suffered disabilities socially, economically and educationally before such certificate is issued. Any concerned authority issuing such certificates in a routine manner would be committing the dereliction of Constitutional duty.

In the result, there is no merit in this appeal and it deserves to be dismissed with costs. The tribal certificate dated 7th August, 1992 procured by the appellant by misrepresentation of the facts is quashed and set aside.

The appeal is dismissed with costs.