

(2010) 09 MAD CK 0414

In the Madras High Court

Case No : Writ Petition No. 9771 of 2007 and M.P. No's. 1 and 2 of 2007

D. Vidjeacoumary

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 226, 239

Citation : (2011) 1 MLJ 1058

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : M. Gnanasekar, for the Appellant; Syed Mustafa, Additional Government Pleader, for the Respondent

Judgement

S. Tamilvanan, J.—This writ petition has been filed by the Petitioner, under Article 226 of the Constitution of India, seeking an order in the nature of writ of certiorarified mandamus, to call for the records relating to the order, dated 19.2.2007 passed by the second Respondent, in No. 105/TOO/D/2007/105, and quash the same and consequently direct the second Respondent to issue Scheduled Caste (Origin) Certificate to the Petitioner's daughter R. Arthi, based on the Petitioner's residential status.

2. According to the Petitioner, she is a permanent resident of Puducherry State, originally known as Pondicherry, having been born on 1.11.1962. She was employed as Headmistress, Gr. II in Subramaniya Bharathiyar Government Girls Higher Secondary School at Puducherry. Her parents belong to Pudhucherry by domicile as Hindu Adi-Dravida Community recognised as a Scheduled Caste as per the Constitution (Pondicherry) Scheduled Caste Order 1964. Her husband V. Ranganathan is working as Lecturer in the Education Department of Pondicherry Administration for the past 18 years. Her husband also belongs to Hindu Adi-Dravida Community and he is residing in Pondicherry for the past twenty years. Out of their wedlock, she gave birth to a female child on 30.9.1989 at the Maternity Hospital, Pudhucherry and the said daughter of the Petitioner is also

residing in Pudhucherry, ever since from the date of her birth.

3. In the said circumstances, the Petitioner submitted that a representation on 11.1.2007 to the second Respondent, Tahsildar, Olugaret Taluk Office, Pudhucherry was made by the Petitioner, requesting to issue Scheduled Caste (Origin) Certificate to her daughter, R. Arthi, based on her residential status and that was negated by the second Respondent. Aggrieved by which, this writ petition has been filed.

4. The question of law involved in this writ petition is whether Scheduled Caste (Origin) Certificate could be issued only based on the Scheduled Caste (Origin) status of the father of the child, despite the fact that the mother's origin status is Puducherry State and her daughter Arthi is residing with her parents in Puducherry State ever since her birth.

5. Learned Counsel appearing for the Petitioner submitted that similar case was decided by this Court in W.P. No. 30841 of 2002 in favour of the claim of the Petitioner herein and writ appeal preferred by the State was dismissed by a Division Bench of this Court, confirming the order passed by the learned single Judge.

6. Learned Government Advocate appearing for the Respondents submitted that aggrieved by the judgment, the Respondent State, has preferred SLP before the Supreme Court, which is pending. Admittedly, there is no stay granted by the Hon'ble Supreme Court in the aforesaid SLP preferred by the Petitioner.

7. This writ petition relates to the year 2007, hence, keeping this writ petition pending unreasonably would not meet the ends of justice. This Court is of the view that the matter has to be decided, based on the admitted facts, in the light of various decisions rendered by the Hon'ble Apex Court and this Court and ultimately the decisions rendered by the Hon'ble Supreme Court would the law of the land, as per Article 141 of the Constitution of India.

8. In the counter filed by the Respondents, it is not in dispute that the Petitioner has the origin status of Hindu Adi-Dravida Community of Puducherry State, having been born on 1.11.1962 at Puducherry, that was previously known as Pondicherry. It is also not in dispute that she is employed as Headmistress Gr. II in Subramaniya Bharathiyar Government Girls Higher Secondary School, Puducherry and she has been recognised as Scheduled Caste, as per the Constitution (Pondicherry) Scheduled Castes Orders, 1964 and her husband Mr. V. Ranganathan is also belongs to Hindu Adi-Dravida Community, working as Lecturer in the Department of Education, Government of Puducherry for the past 18 years, on the date of filing the writ petition and the aforesaid factual aspects are not in dispute in the writ petition.

9. It is an admitted fact that as per the mandate of Article 341 of the Constitution of India, there shall be proclamation in respect of obtaining various sects constituting Scheduled Caste in the State or Union Territory by President of

India. Accordingly, President of India promulgated the Constitution (Pondicherry). Scheduled Castes Order, 1964, which was notified in G.S.R 419, dated 5.3.1964 of Government of India, Ministry of Law (Legislative Department) and published in Extra Ordinary Gazette No. 11, dated 26.3.1964 by the General Administration Department, Government of Pondicherry.

10. According to the Respondents, the first comprehensive and consolidated order pertaining to SC/ST was issued by the Administration (Revenue Department) in G.O. Ms. No. 28, dated 2.2.1977, wherein a distinction between origin and migrant members of Scheduled Caste was clearly made out and it was further contended that as per the communication of Government of India, Ministry of Home Affairs vide their Letter No. BC/16014/1/82-SC & BCD-I, dated 22.2.1985, it has been clarified that a Scheduled Caste/Tribe person who has migrated from the State of Origin to some other State for the purpose of seeking education, employment etc., will be deemed to be Scheduled Caste/Scheduled Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the state to which he has migrated.

11. The Hon''ble Supreme Court in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , by Constitutional Bench has ruled that a person who is recognised as a member of SC/ST in his original State, will be entitled to all the benefits under the Constitution in that State alone and not in all parts of the Country wherever he migrates.

12. Similarly, in Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, , Constitutional Bench of the Hon''ble Supreme Court has held that a person belonging to SC/ST in relation to his original State, of which he is permanent or ordinary resident, cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education etc.

13. In S. Nagarajan Vs. District Collector, Salem and others, , the Hon''ble Supreme Court has held that by interpolation of the documents, none can get a particular social status, unless it is recognised as per the Presidential Notification/ Order under Articles 341 or 342 of the Constitution.

14. In State of Maharashtra v. Milind and Ors. AIR 2001 SC 393: (2001) 1 SCC 4: (2000) Supp MLJ 29, the Hon''ble Supreme Court has held that a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 of the Constitution of India.

15. As contemplated under Article 341 of the Constitution of India, in consultation with the Governor of the concerned State, Presidential 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. In this regard, as per Clause (2) of

the said Article, Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) of Article 341 and Article 342 relates to Scheduled Tribes.

16. In the instant case, there is no dispute with regard to the fact that the Petitioner, mother of the girl child has origin status of Hindu Adi-Dravida Community of Scheduled Caste of Puducherry State. Having been born on 1.11.1962 at Puducherry, she is having the residential status as well as community status and also got her appointment in Puducherry State and permanently residing there and she married Mr. V. Ranganathan. According to the learned Additional Government Pleader (P) appearing for the Respondents, the husband of the Petitioner was a resident of Tamil Nadu, migrated to Puducherry State, working as Lecturer in the Department of Education, Government of Puducherry for the past 18 years on the date of filing the writ petition.

17. It is an admitted fact that both the Petitioner and her husband are residing in Puducherry state continuously. Both belong to the same Hindu Adi-Dravida of Scheduled Caste.

18. A Full Bench of the Hon'ble Apex Court, consisting of 3 Judges in *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, , considering *Marri Chandrasekhar Rao v. Dean, Seth G.S. Medical College and Ors.* (supra) and *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr.* (supra), while deciding the question as to whether selection and appointment made for migrant Scheduled Caste candidates of other States against quota reserved for Scheduled Caste candidates on the post of Selection Grade teachers in the Union Territory of Pondicherry, as legal and valid and held as follows:

...the Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration as well. Since all SC/ST candidates which have been recognised as such under the orders issued by the President from time to time irrespective of the State/Union Territory, in relation to which particular castes or tribes have been recognised as S Cs/S Ts are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry Administration. Consequently, all SC/ST candidates from outside the UT of Pondicherry would also be eligible for posts reserved for SC/ST candidates in the Pondicherry Administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry Administration where under migrant SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration.

17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in *Marri*

Chandrasekhar Rao v. Dean, Seth G.S. Medical College and Ors. (supra) cannot have application here as UT of Pondicherry is not a State. As shown above, a Union Territory is administered by the President through an Administrator appointed by him. In the context of Article 246, Union Territories are excluded from the ambit of the expression "State" occurring therein. This was clearly explained by a Constitution Bench in T.M. Kannian v. ITO. In New Delhi Municipal Council v. State of Punjab the majority has approved the ratio of T.M. Kannian v. ITO (supra) and has held that the Union Territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of Marri Chandrasekhar Rao v. Dean, Seth G.S. Medical College and Ors. (supra) in setting aside the selection and appointment of migrant SC candidates.

20... A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union Territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of the People or Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of a forward caste.

21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognised as backward classes of citizens and none else. If a State or Union Territory makes a provision where under the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid. However, there would be no infraction of Clause (4) of Article 16 if a Union Territory by virtue of its peculiar position being governed by the President as laid down in Article 239

extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the Schedule to the Presidential Order issued for such Union Territory. The UT of Pondicherry having adopted a policy of the Central Government where under all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

19. Referring the aforesaid judgment, a Division Bench of this Court in Union of India and Anr. v. P. Jeya, by judgment, dated 30.3.2010 made in W.A. No. 1326 of 2005 has held that the Hon"ble Apex Court has made it clear that to avail benefits of reservation in Union Territory of Pondicherry, a migrant is also eligible and entitled to proceed, if he satisfies with the condition of either Scheduled Caste or Scheduled Tribe in his own State and also be recognised as either SC or ST community respectively in Pondicherry State.

20. In the instant case, it is not in dispute that both the Petitioner as well as her husband belong to Hindu Adi-Dravida Community of Scheduled Caste, however, the origin status of the Petitioner, by her birth is Puducherry State, whereas her husband, who was born in Tamil Nadu State migrated to Puducherry State, married the Petitioner herein and settled at Puducherry and their daughter Arthi born there and the issue is relating to her origin status, in respect of her community.

21. Learned Counsel appearing for the Respondents submitted that as per the view taken by the Respondents, status of the father has to be taken into consideration, accordingly, the Petitioner's daughter, Arthi is not entitled to get Hindu Adi-Dravida origin status, based on her mother's status.

22. It is not in dispute that Article 14 of the Constitution enshrines equality before the law and equal protection of the laws. As contemplated under Article 14, the State shall not deny equality of person before the law or the equal protection of the laws within the territory of India and accordingly, no citizen shall be discriminated on the basis of religion, race, caste, sex or place of birth.

23. Learned Counsel appearing for the Respondents has not dispute that gender discrimination is against Article 14 of the Constitution, unless it falls under the category of reasonable classification. It cannot be disputed that both the father and mother are enjoying equal status as parents of any child. However, while granting custody of child, the welfare of the child is taken into consideration by Courts. In the instant case, the Petitioner, mother of the girl, Arthi has origin status of Puducherry to claim as member of Scheduled Caste of Puducherry State and it is not in dispute that she is permanently residing in Puducherry State, having been employed and holding a responsible post as Headmistress of a Girls Higher Secondary School and the father of the girl is also residing in Puducherry State and working as Lecturer. Even in the counter, it is admitted that he is working as Lecturer in the Department of Education in Government of

Puducherry for the past 18 years.

24. In such circumstances, it is claimed that the denial of the origin status of Ms. Arthi, as Hindu Adi-Dravida Community of Scheduled Caste of Puducherry State is against the mandate of the Constitution, especially against Article 14 of the Constitution. The Petitioner has claimed origin status to her daughter, Ms. Arthi, based on her origin status. However, the second Respondent by the impugned order has denied the origin status claimed, though her daughter Ms. Arthi was born in Puducherry State, on the ground that the origin status of the girl's father is not Puducherry State.

25. It cannot be disputed that both the parents are in equal footing, hence, based on the other relevant factors, the status of the child has to be decided.

26. In the instant case, both the parents of Arthi are permanently residing in Puducherry State and the girl is a resident of Puducherry State, since from her birth. Hence, I am of the considered view that denial of origin status to the daughter of the Petitioner, based on the origin status of the father of the girl is certainly a gender discrimination, accordingly, violation of Article 14 of the Constitution of India.

27. In the light of various decisions rendered by the Hon"ble Apex Court and the decision of the Division Bench of this Court referred to above, I am of the view that the writ petition has to be allowed, to meet the ends of justice and the impugned order, dated 19.2.2007 passed by the second Respondent is liable to be quashed.

28. In the result, this writ petition is allowed and the impugned order, dated 19.2.2007 made in No. 105/TOO/D/2007/105 passed by the second Respondent is quashed and the Respondents are directed to issue Scheduled Caste (Origin) Certificate to the Petitioner's daughter Ms. R. Arthi, based on the Petitioner's residential status and other relevant factors, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. However, no order as to costs.