

(2000) 08 GUJ CK 0004

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1670 of 1999 in Special Civil Application No. 4593 of 1999 and Letters Patent Appeal No. 1671 of 1999 in Special Civil Application No. 5977 of 1999 and Letters Patent Appeal No. 1672 of 1999 in Special Civil Application No. 3885

Dean

APPELLANT

Vs

Rabari Jitendrakumar Arjanbhai

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 342

Citation : (2001) 21 GLH 560 : (2001) 4 GLR 3334

Hon'ble Judges : R.R. Tripathi, J;M.R. Calla, J

Bench : Division Bench

Advocate : Harsha Devani, A.G.P. in Letter Patent Appeal Nos .1670, 1671 and 1672 of 1999 and Tushar Mehta, V.H. Bhairavia, for V.D. Parghi, for the Appellant; Tushar Mehta, for respondent in Letters Patent Appeal Nos. 1670, 1671 and 1672 of 1999, Harsha Devani, Learned A.G.P., Kirit I. Patel, i.e. N.H.L Medical College, Ahmedabad in Special Civil Application Nos. 4108/2000 and 5189/2000 and M.D. Pandya, in Special Civil Application No. 9024/99, for the Respondent

Final Decision : Allowed

Judgement

M.R.Calla, J.—The three Letters Patent Appeals are directed against the common judgment and order dated 20.9.99 whereby the learned single Judge allowed three Special Civil Applications Nos.4593, 5977 and 3885 of 1999. All these three Letters Patent Appeals were admitted on 1.3.2000 and were directed to be listed for final hearing. During the pendency of these Letters Patent Appeals, Special Civil Application No.4108/2000 was filed on 25.4.2000, Special Civil Application No.4123/2000 was filed on 24.4.2000, Special Civil Application No.5189/2000 was filed on 25.5.2000, Special Civil Application No.5260/2000 was filed on 31.5.2000 and Special Civil Application No.5893/2000 was filed on 19.6.2000; while Special Civil Application No.4295/99 had already been filed on 18.1.99 even during the pendency of the three Special Civil Applications. This Special

Civil Application No.4295/99 had been filed by Adijati Rabari Seva Mandal and two others as a public interest litigation. Special Civil Application No.9024/99 was filed on 18.11.99. Notices had been issued in all these Special Civil Applications on different dates except Special Civil Application No.9024/99 in which the Rule was issued on 19.11.99 and it appears that subsequently an order was passed that these matters may be listed alongwith Letters Patent Appeals and this is how these Special Civil Applications also came up before us when the Letters Patent Appeals came up for final hearing. Whereas the question involved in these Letters Patent Appeals and all these Special Civil Applications are common, we hereby issue rule in the Special Civil Applications in which only notices had been issued as stated above. Service of Rule in each of these Special Civil Applications is waived by the learned counsel for the respondents. Thus the three Letters Patent Appeals alongwith seven Special Civil Applications have been heard together.

2. In all these matters, except Special Civil Application No.9024/99, original petitioners are students desirous of being treated as Scheduled Tribe candidates for the purpose of admission to the professional courses. In Special Civil Application No.9024/99 the petitioner is desirous of seeking appointment in the Gujarat Electricity Board as a helper against seat reserved for Scheduled Tribe.

3. The common question involved in all these matters is as to whether the Vigat Darshak Cards, as have been issued by the Director, Tribal Development, Government of Gujarat (now designated as Commissioner, Tribal Development) should be treated as sufficient as a Caste Certificate for the purpose of claiming benefit as a member of Scheduled Tribe and as to whether the Mamlatdar can issue the Caste Certificate in their favour on the basis of the Vigat Darshak Cards without making any further inquiry. During the course of arguments, it has been given out by Mr. Tushar Mehta, learned counsel for the original petitioners in Special Civil Applications Nos.4593/99 and 5977/99 (i.e. subject matter of Letters Patent Appeals Nos.1670/99 and 1671/99) that these two petitioners had been issued Certificates by the concerned Mamlatdar after the order passed by the learned single Judge on 20.9.99 and that in case of Rekha Nathabhai Sambada, who was petitioner in Special Civil Application No.5977/99, the Mamlatdar has also made reference to the proceedings of the meeting dated 12.10.99 held in the office of the Mamlatdar and the Certificate dated 11.8.80 issued by the District Social Welfare Officer, Junagadh.

4. By Notification dated 29.10.1956 issued by the Ministry of Home Affairs of the Government of India, persons belonging to Rabari, Bharvad and Charan Castes residing in the Nesses area of the Forests of Gir, Barda and Alech were included in the list of Scheduled Tribes. Those Rebaris who were residing in the Nesses area in the Forests of Gir, Barda and Alech at the time of the issuance of the aforesaid Notification could apply for the Caste Certificate of being members of Scheduled Tribe. However, the leaders of Rabari community had represented before the State Government that due to Gir Sanctuary Scheme and other allied

reasons, the Rabaris, who had left the Nesses situated in Gir, Barda and Alech areas were facing great difficulties in obtaining Caste Certificates as the relevant data was not readily available with them and they were not in a position to collect such information, being illiterate persons. The Government of India had, therefore, passed a Resolution dated 28.1.93 entrusting the work of scrutinising the list produced by the Sorathia Rabaris and verifying as to whether those persons, whose names were mentioned in the list, were actually entitled to the status of being Scheduled Tribe or not, to one Shri J.M.Malkan, retired Joint Director, Social Welfare Department. It is not in dispute that said Shri J.M.Malkan submitted his report in this regard in 4 Volumes on the basis of the studies made by him during the period from 8.2.93 to 7.5.93. A Circular dated 3.2.94 was then issued by the Tribal Development Department and the Director, Tribal Development, now known as Commissioner, Tribal Development was entrusted with the work of issuing Vigat Darshak Cards (Cards showing the details on the basis of the report submitted by Shri Malkan wherein details were set out against the names of the persons in the list). While this Circular dated 3.2.94 clearly holds out that the Caste certificate is required to be issued by the Mamlatdar and the concerned Mamlatdar is the Competent Authority for the purpose of issuing the Caste Certificate and even in terms of the instructions, as are contained in the letter dated 22.3.77 issued by the Home Ministry of Government of India, it is insisted that the Caste Certificates are to be issued by Revenue Authorities only, the petitioners in these cases sought relief that the Vigat Darshak Cards issued by the Director, Tribal Development, should be treated to be sufficient proof for the purpose of treating them as members of Scheduled Tribe and on that basis they must be given the benefit of the reserved status, whether for the purpose of admission in professional courses or for the purpose of employment. It may also be mentioned that for the purpose of verification of the status of the persons belonging to Rabari, Bharvad and Charan Castes, who had migrated from the Nesses area (group of few huts/houses in areas of Forests of Gir, Barda and Alech) the Tribal Development Department had issued a Resolution dated 29.11.94 constituting a Committee consisting of Taluka Mamlatdar, Taluka Development Officer and Taluka Range Forests Officer and the concerned Mamlatdar is required to follow the necessary procedure for issuance of Caste Certificate. The Tribal Development Department of Government of Gujarat had also addressed a letter to the Collector Junagadh according to which:-

(a) Those Rabaris who are permanently residing in the Nesses area in the Forests of Gir, Barda and Alech on the date of the publication of the Presidential Notification whereby Rabaris residing in the Nesses area in the Forests of Gir, Barda and Alech had been declared as Scheduled Tribe i.e. on 29.10.56 and that they were entitled to obtain a Scheduled Tribe Certificate. Those who are born after the said date are entitled to get Scheduled Tribe Certificate if their parents were permanently residing in the aforesaid Nesses on the date of the Notification.

(b) After due verification and after reliable scrutiny the decision to issue Caste Certificate is to be taken and the Certificate to be issued by the concerned

Mamlatdar in whose jurisdiction the Ness in which the permanent residence on the aforesaid date was proved.

(c) The scrutiny can be carried out on the basis of the details which have been given in the Vigat Darshak Cards issued by the Director, Tribal Development but no policy has been framed to issue Caste Certificate on the basis of the Vigat Darshak Card. 5. A Government Resolution dated 28.8.97 had also been issued by the Tribal Development Department that the concerned Mamlatdar of the concerned District had been appointed as the authority for issuing the Caste certificate after necessary verification regarding the status of persons belonging to Rabari community, who have migrated from the Nesses areas in the Forests of Gir, Barda and Alech and after considering the Report of the Committee question of issuing the Certificate is to be decided. Accordingly, those persons, who produced evidence/proof showing that they or their parents were permanently residing in these areas on the date of the Presidential Notification of 1956 were to be issued the Caste Certificates. The cases relating to Caste Certificates are placed before three Member Taluka Level Committee and after verification of the evidence produced before the Committee, concerned Mamlatdar accordingly issues Certificates depending upon the decision of the Committee. In this regard, we may also make reference to a Government Resolution dated 27.6.86, whereby it was held out that the candidates claiming to be the members of the Schedule Tribe had to give details and produce the materials with regard to the Caste of their father and mother, Matriculation or School Leaving Certificate, birth Certificate and other revenue records etc. and it appears that this Resolution was issued keeping in view the allegations that such Caste Certificates were being wrongly issued in certain cases. Thus, the persons residing in or not migrated from the Nesses area in the Forests of Gir, Barda and Alech are to be considered for grant of the Scheduled Tribe Certificate in terms of the Government Resolution dated 29.11.94 issued by the Tribal Development Department based on the Presidential Notification dated 29.10.56 after following the procedure to which reference has already been made hereinabove in detail. The Applications are ofcourse required to be considered on its own merits. While it is not in dispute between the parties that ultimately the Certificate has to be issued by the concerned Mamlatdar, after following the proper procedure, the petitioners have joined issues with the respondent - State of Gujarat and its functionaries and other Institutions on the point that the production of the Vigat Darshak Card by itself should be taken to be sufficient proof so as to treat the holder of the Vigat Darshak Card as a member of the Scheduled Tribe and the Mamlatdar should issue the Caste Certificate in favour of such person on the basis of the Vigat Darshak Card itself without requiring the applicant to furnish any other or further proof in this regard. The learned single Judge while deciding the above three Special Civil Applications has considered that the Presidential Notification does not limit the operation of the declaration only to the children of the Rabaris who are residing in those Forests and that when the Government has given the benefits to children of the Rabaris who were residing in the Nesses as on

29.10.56, there is no reason to deny the benefit to the grand children of the Rabaris who were residing in the Nesses on 29.10.56. But at the same time, it cannot be said that the Government can never draw a line as to when the persons may be deemed to have shifted their residence permanently. Whether the persons who were originally residing as Rabaris in the aforesaid Nesses on 29.10.56 had permanently migrated or not could be decided with reference to the number of generations which were away from the Nesses. That it would be reasonable to presume that even if the Rabaris might have migrated for earning their livelihood and, therefore, they might not be residing in the Nesses after 29.10.56, they may come back to the locality after their retirement and so also their children and the grand children may also come back, that there was no reason for limiting the benefits of this declaration only to the second generation i.e. the children. Ofcourse, it could not be unlimited and that benefit could be extended to two generations i.e. Rabaris who were residing in the Nesses on 29.10.56 and to their children, who might be away for the purpose of earning their livelihood and their grand children, who may be away for the purpose of education. For these reasons, the learned single Judge allowed the three Special Civil Applications and directed the respondents to treat the petitioners as belonging to the Scheduled Tribe at Sr.No.24 of Part IV of the Presidential Declaration under Article 342 of the Constitution as contained in the Notification dated 29.10.56 and accordingly Rule was made absolute.

6. The challenge to this decision made in the three Letters Patent Appeals on behalf of the State Government is that the Vigat Darshak Card by itself can not be taken to be conclusive proof so as to treat the holder of such a card to be a member of Scheduled Tribe and it cannot be said that the Mamlatdar had to issue a Caste Certificate on the basis of such Vigat Darshak Card. In fact we find that one of the Mamlatdars has prescribed a proforma for making such applications, which contains about 17 columns and application is required to be made in the said Proforma. This Proforma is prescribed by the concerned Mamlatdar and it cannot be said that this rigid proforma is to be followed in each and every case. But before issuing Caste Certificate, it is always open for the concerned Mamlatdar to require the relevant answer and production of the relevant material so that the Committee may take appropriate decision based on such material. From the columns of this prescribed Proforma, the copy of which has been annexed at page 46 in the record of Letters Patent Appeal No.1672/99, as was annexed as Annexure "D" in Special Civil Application No.3885/99 with the letter dated 18.5.99 by the Mamlatdar of Ranavav addressed to one Shri Sureshkumar Bhupatbhai Karmata, we find from the entries at Nos.10 and 11 therein that these entries require the production of Vigat Darshak Cards also. Thus, it is very clear that Vigat Darshak Card is certainly a material, which can be said to be relevant for the purpose of deciding the question of Caste Certificate by the Mamlatdar. It has to be agreed on all hands that in fact the job was entrusted by a Government Resolution to Mr.Malkan so as to take up the exercise of collecting the details about persons of the Rabari communities, who

were residing in the Nesses of the Forests and on the basis of such a study, if the Tribal Development Department had issued the Vigat Darshak Cards and if made certain entries, which otherwise could not be readily available to persons, the same cannot be ignored altogether and they must form a relevant material in the nature of guidelines to the concerned Committee and the Mamlatdar for the purpose of issuing the Caste Certificate, but we have no hesitation in holding that by no means such Vigat Darshak Cards can be said to be conclusive that holder of such a Card is a member of Scheduled Tribe. Ofcourse the correctness of the entries made therein have to be accepted by the Mamlatdar to be correct unless the Mamlatdar has any other material to disbelieve such entries. After all this exercise at the Government level was undertaken only to ensure that the persons claiming eligibility for such Certificate have ready material with them in support of their claim and the materials such as Maswadi Receipts etc., which may not be readily available and, therefore, the details thereof may be reflected in such Vigat Darshak Cards with the available particulars. How a material in aid for the purpose of arriving at the decision as to whether the applicant concerned is to be treated as a member of the Scheduled Tribe or not should be taken as conclusive proof? In such cases, guidelines as were laid down by the Apex Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, have to be followed. We may also observe that in the case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, the Supreme Court has very clearly held that burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. In ordinary course there is no reason to doubt or disbelieve the correctness of those entries but in a given case even if taking such entries to be correct on their face value, it may be found that the holder of such Vigat Darshak Card is not entitled to the Certificate of being a Scheduled Tribe and in a given case if it is found that such entries have been wrongly reflected in the Vigat Darshak Card and the Mamlatdar has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries and the Mamlatdar or the concerned Committee may certainly enter upon such an exercise and to that limited extent we are of the view that the conclusion arrived at by the learned single Judge deserves to be modified. In no case, the blanket direction, as had been issued by the learned single Judge, could be issued to treat the petitioners as belonging to Scheduled Tribe only on the basis of the Vigat Darshak Card. To that extent, we find that the Letters Patent Appeals filed by the State of Gujarat deserves to be allowed and we direct that in case the Vigat Darshak Card is produced before the concerned Committee and the Mamlatdar, they may proceed to decide the Applications of the candidates claiming to be treated as members of Scheduled Tribe and in taking up such exercise, they may consider such Vigat Darshak Cards as a relevant material and the entries made therein to be correct unless there is any ground or material to disbelieve the same and find those entries to be wrong or false and each case has to be decided on its own facts and

the applicant will be under an obligation to furnish the necessary materials, as may be required, besides the Vigat Darshak Card itself. The order passed by the learned single Judge is, therefore, set aside and these three Appeals are allowed, as above, with no order as to costs.

7. In view of the reasoning and the conclusion arrived at by us in the three Appeals, as aforesaid, the other Special Civil Applications, as have been filed, deserves to be rejected subject to the direction, as has been issued by us herein above. The rights of all the parties shall be determined accordingly for the purpose of their claim to be treated as members of Scheduled Tribe. The interim order passed in any of these matters comes to an end and the respondents may consider the case of each of these petitioners, whether they are members of Scheduled Tribe or not accordingly in the light of what has been held in this order. Rule is discharged in each of these Special Civil Applications with no order as to costs.

In case the respondents find that the Certificates issued by Mamlatdar in favour of petitioners in Special Civil Applications Nos.4593/99 and 5577/99 after the Judgment of the learned single Judge dated 20.9.99 are sufficient for the purpose of treating them to be Scheduled Tribe candidates, they may deal with their cases accordingly.

As the main Letters Patent Appeals have already been decided, no orders are required to be passed in Civil Applications Nos.1188, 1189 and 1187 of 2000 and they are accordingly disposed of.