

(2023) 09 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4084 Of 2023

Dribbleena Sarania

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 342, 342(2)
Evidence Act, 1872 — Section 106

Citation : (2023) 09 GAU CK 0057

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Sarania

Final Decision : Disposed Of

Judgement

1. Heard Ms. C Newme, learned counsel for the petitioner. Also heard Mr. R Dhar, learned counsel for the authorities under the Tribal Affairs (Plains) Department of Government of Assam, Mr. B Gogoi, learned counsel for the authorities under the Health and Family Welfare Department including the Medical Education Department and Mr. P Saikia, learned counsel for the authorities under the Deputy Commissioner, Baksa.

2. The petitioner Dribbleena Sarania is an intending candidate for admission into the 1st Year MBBS Course for the year 2023 and seeks for an admission under the reserved category of Scheduled Tribes (Plains) [in short ST(P)]. For the purpose, the petitioner relies upon a certificate issued by the All Assam Tribal Sangha, Tamulpur District Unit dated 26.03.2013, wherein it is certified that Dribbleena Sarania daughter of Khargeswar Sarania of village Bhakatpara in the Baksa district belongs to ST(P) being a member of Bodo Kachari community. It is taken note that Bodo Kachari community is enlisted under the Constitution (Scheduled Tribes) Order 1950 to be one of the recognized Scheduled Tribes in the State of Assam. The Certificate dated 26.03.2013 is signed by the Vice President of Tamulpur District Tribal Sangha and is also countersigned by the Sub-

Divisional Officer (Civil) Tamulpur. The petitioner relies upon another certificate dated 03.07.2023 which is also issued under the signature of Vice President of Tamulpur District Tribal Sangha and countersigned by the Sub-Divisional Officer (Civil) Tamulpur and also contains the information that the petitioner Dribbleena Sarania is the daughter of Khargeswar Sarania of village Bhakatpara in the Baksa district and belongs to the Bodo Kachari community

3. But the certificate dated 03.07.2023 certifying that the petitioner Dribbleena Sarania belongs to the Bodo Kachari community had been verbally withdrawn by the Additional Deputy Commissioner Tamulpur and being aggrieved this writ petition is instituted. When the writ petition was moved, by the order dated 25.07.2023, the petitioner was allowed to upload the caste certificates dated 26.03.2013 and 03.07.2023 for the purpose of admission into the 1st Year MBBS Course and accordingly, it is stated that the petitioner has been given a provisional admission.

4. We also take note that as per the judgment of the Hon'ble Supreme Court rendered in *Mridul Dhar v. Union of India* reported in (2005) 2 SCC 65, a finality as regards admission to the 1st Year MBBS Course would have to be made on or before the 30th of every year and consequently for the present year it would be 30.09.2023. As the petitioner has been given a provisional admission pursuant to the interim order of the Court, there is also a necessity that a final order be also passed in this writ petition or else the provisional admission would become a final admission after 30.09.2023.

5. In the circumstance, as the certificate of the petitioner dated 03.07.2023 had been verbally withdrawn by the Additional Deputy Commissioner Tamulpur, we required the both the Additional Deputy Commissioner Tamulpur as well as the Vice President of Tamulpur District Tribal Sangha who had issued the certificate to remain personally present before the Court and accordingly, they were present. The Additional Deputy Commissioner Tamulpur had made a statement before the Court that in spite of making all the enquires at the field level including visiting the family of the petitioner as well as the other families of village Bhakatpara, who are also using the surname Sarania, no material could be found that the petitioner who is using the surname Sarania do actually belong to the Bodo Kachari community.

6. Mr. M Sarania, learned counsel who appeared for the petitioner before the Court on 28.09.2023 earnestly argued by producing relevant materials that a person with another surname which ordinarily may not lead to a conclusion that the person belongs to the Scheduled Caste or Scheduled Tribe, may actually belong to a Scheduled Caste or Scheduled Tribe and for the purpose, had also produced certain materials where such instances can be noticed that person writing some other surnames may also belong to a Scheduled Tribe community. Accordingly, it is the submission of the petitioner that although her family writes the surname Sarania, they actually do belong to the Bodo Kachari community.

7. In this respect, we have to be a little circumspect inasmuch by the Notification No. TAD/BC/291/214/105 dated 05.06.2018 the persons belonging to Sarania community were included to be a ST(P) in the State of Assam, against which a PIL had also been instituted. We also have to take note of the constitutional provision for a community to be recognized and included as Scheduled Tribe is as per the provisions of the Article 342 of the Constitution. Under Article 342(2) it is provided that the Parliament may by law include in or exclude from the list of Scheduled Tribes that any tribe or tribal community or part of or group within any tribe or tribal community, would be a Scheduled Tribe.

8. As it is the constitutional provision that exclusion or inclusion of any community as a Scheduled Tribe is to be made by the Parliament by law, the notification including the Sarania community as a Scheduled Tribe was withdrawn by the State authorities by the communication dated 28.02.2023 of the Joint Secretary to the Government of Assam in the Tribal Affairs Department. As the Sarania community which had once been included by the Governor of Assam by an appropriate Notification to be included as a ST(P) and thereafter, on being assailed in a PIL had withdrawn the said notification, we have to be a little circumspect that when a person having a surname Sarania claims to be a person belonging to the ST(P) by virtue of certain certificates that may have been issued certifying that the person belongs to the Bodo Kachari community.

9. We are accepting the situation that all such certificates that may have been issued in favour of the petitioner Dribbleena Sarania are otherwise genuine certificates and not creation of any fraud but the question would remain as to whether on facts, the petitioner Dribbleena Sarania do belong to the Bodo Kachari community as stated in the certificates. In the circumstance, by our order dated 28.09.2023, we required the petitioner Dribbleena Sarania to present herself before the State Level Scrutiny Committee to discharge the burden that on facts, the petitioner do actually belong to the Bodo Kachari community. To facilitate the process, we requested the Additional Deputy Commissioner Tamulpur as well as the Vice President of Tamulpur District Unit of Tribal Sangha to also remain present before the Committee while such decision is taken.

10. Initially, a report of the Committee was placed before the Court that the SLC is of the opinion that preponderance of probability points to the fact that Dribbleena Sarania belongs to the Bodo Kachari community. The preponderance was based upon a statement by the Inspector in the CID of Assam that after some field visit the Inspector came to a conclusion that the petitioner belongs to the Scheduled Tribes but could not conclusively ascertain whether she belongs to the Bodo Kachari or not. The statement of the Additional Deputy Commissioner that no sufficient grounds were found to establish that the petitioner belongs to Bodo Kachari community was also take note but a certificate of the Gaon Burah was relied upon that the petitioner belongs to the Bodo Kachari community.

11. As the purported conclusion of the Committee was based on preponderance

of probability, the Committee deemed it appropriate that the earlier conclusion requires a reconsideration and upon doing so, the order of the committee dated 29.09.2023 has been placed before the Court which is extracted as below:

"After a discussion with the Learned Standing Counsel of the Department, the order passed by the State Level Scrutiny Committee vide No. E.355878/60 dated 28.09.2023 was revisited today by the Committee to consider the matter in further detail.

It is seen that the main documentary evidence adduced by Smt Dribbleena Sarania with regard to her being Borokachari are the certificates issued by the All Assam Tribal Sangha to herself and her Uncle (Father's Younger Brother) and Aunty(Father's Sister). In this regard, it is also noted that Shri Pabitra Narzary, Vice President of Tamulpur District Tribal Sangha stated that he submitted one memorandum to the ADC i/c Tamulpur Sub-Division on 27.07.2023 wherein he had withdrawn the certificate issued to Smt Dribbleena Sarania which was issued on the Annexure V of the MBBS application form. It is also to be noted that the Father of Smt Dribbleena Sarania possesses caste certificate in the name of Rabha Tribe and not Borokachari, and if it was wrongly issued, he has not taken any initiative to get it corrected. The certificates issued by Gaon Pradhan and Gaon Burhas could have been corroborative, had there been any credible supportive documentary evidence. The Inspector, CID Assam and ADC Tamulpur, who actually visited the field, could not conclusively say that Smt Dribbleena Sarania belongs to Borokachari community.

Having regard to the above discussions, the State Level Scrutiny Committee is of the opinion that it's earlier finding needs to be reviewed,, and is accordingly subjected to review. As Smt Dribbleena Sarania could not prove with sufficient credible documentary evidence that she belongs to Borokachari community, therefore the State Level Scrutiny Committee could not arrive at the final conclusion that Smti Dribbleena Sarania is from Borokachari community."

12. The conclusion in the order dated 29.09.2023 is that the petitioner Dribbleena Sarania could not prove with sufficient credible documentary evidence or materials that she belongs to the Bodo Kachari community and therefore, the State Level Scrutiny Committee cannot arrive at a final conclusion that the petitioner is from the Bodo Kachari community.

13. As the certificates dated 26.03.2013 and 03.07.2023 do certify that the petitioner belongs to the Bodo Kachari community, it is taken note that all such certificates are issued by the authorities who are otherwise competent to issue such certificates.

14. From such point of view, we have no hesitation to hold that the petitioner did not rely upon any fraudulent certificates. But the question would remain as to whether the existence of fact certified in the certificate do exist or not. It is one thing that the certificate was issued by the competent authority themselves and it is another aspect that the fact depicted in the certificate actually exists or not.

It is for the second reason that we have required the matter to be placed before the State Level Scrutiny Committee for its decision.

15. Under the law, a certificate is a document by which the author of the certificate certifies of the existence of a fact. The existence of a fact can be certified either on the basis of the personal knowledge of the author of the certificate or on the basis of any records which may support the existence of a fact. A certificate cannot be understood to be a personal opinion of the author of the certificate without the author having knowledge of the existence of a fact or the author is supported by any records regarding existence of the fact. It is this aspect of the matter which is of concern.

16. We are conscious of the fact that these certificates are issued to the candidates to procure admission in the 1st Year MBBS Course under the reserved category of ST(P). If on facts, a person do not belong to any of the communities enlisted as ST(P) under the Constitution (Scheduled Tribes) Order 1950 but by some means obtains a certificate from the authorized authority, and procures a seat in the MBBS course, it would have to be understood that it would be a constitutional fraud inasmuch as the benefits of a reservation provided in the Constitution will now be enjoyed by a person for whom it was not intended by the Constitution and more seriously, it would leave out another genuine candidate who in fact actually do belong to a community which is enlisted as a ST(P).

17. Considering the seriousness of the issue that a constitutional fraud may be committed where a person for whom the benefit is not provided by the Constitution would avail the benefits whereas the person for whom the benefit is intended will be deprived of the benefit, we are of the view that a thorough and appropriate enquiry should be made by the State Level Scrutiny Committee to arrive at a satisfaction of the existence of the fact that the person concerned do actually belong to the a community which is enlisted as a ST(P) under the Constitution (Scheduled Tribes) Order 1950.

18. The existence of the factual situation can be ascertained only upon the family ascendency of the persons being traced out to the community concerned in respect of any enlisted village where the said community is ordinarily recognized to have its existence. From such point of view, we are in agreement with the report dated 29.09.2023 of the State Level Scrutiny Committee that no final conclusion can be arrived that the petitioner Dribbleena Sarania belongs to the Bodo Kachari community.

19. When a person claims that he or she belongs to a particular community, it is a fact which is within the knowledge of the person who claims so.

20. Accordingly, Section 106 of the Indian Evidence Act, 1872 (for short 'the Act of 1872') would be applicable which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

21. In the circumstance, when a person claims that he or she belongs to a particular community that is enlisted in the Constitution (Scheduled Tribes) Order, 1950, under Section 106 of the Act of 1872 the burden of proving is upon the person who claims so and therefore, it is for such person to prove before the State Level Scrutiny Committee that the person does belong to the community which the person claims to be belonging. When the basic material to prove that the person belongs to a particular community is the ascendancy of the family of the particular person, such fact is expected to be in the knowledge of that person and it is not for any other authority to issue a certificate without having the knowledge of the ascendancy of the family of the person.

22. When the procedural law requires the All Assam Tribal Sangha to issue a certificate that a person belongs to a particular community, it is again not the desire of the authority to issue a certificate to a person, but a burden is imposed by law upon such authority to make a factual verification including the verification of the ascendancy of the family of the person concerned and thereafter arrive at a conclusion that the person belongs to a particular family of a particular village which is factually recognized to be belonging to that particular community. A mere issuance of a certificate will not satisfy the requirement of law that the author of the certificate either has the knowledge or certifies the existence of a fact based on any record.

23. However, in course of the hearing, after the report of the State Level Scrutiny Committee had been placed before the Court, the petitioner has produced a certificate from the General Secretary of Bodo Sahitya Sabha dated 29.09.2023, which provides as extracted below:

"This is to certify that Miss Dribbbleena Sarania D/O-Khargeswar Sarania of Village Bhakatpara P.O.- Tamulpur under the district of Baksa in the State of Assam is known to me and she belongs to Boto Kachari Community.

I wish her every success in life.

Ref: All Assam Tribal Sangha Caste Certificate No. 458468 Dt. 18.03.2013"

24. In other words, now we have another certificate this time of the General Secretary of the Bodo Sahitya Sabha certifying that the petitioner Dribbleena Sarania is known to him and that she belongs to the Bodo Kachari community. But again in the certificate issued by the General Secretary, a reference is made to an earlier certificate issued by the All Assam Tribal Sangha, which again shows that the certificate of the General Secretary is not based on any knowledge but on another certificate.

25. It is now for the author of the certificate being the General Secretary of Bodo Sahitya Sabha to produce the relevant materials before the State Level Scrutiny Committee which may show that the General Secretary either has personal knowledge that the petitioner belongs to the Bodo Kachari community or he is the custodian of certain record which may indicate so. In both the circumstances,

appropriate materials may be produced before the State Level Scrutiny Committee.

26. Although, we have otherwise accepted the report, but in view of the production of the certificate of the General Secretary of Bodo Sahitya Sabha dated 29.09.2023, the petitioner is given liberty to produce the same before the State Level Scrutiny Committee. Upon production of the same, the State Level Scrutiny Committee may pass any reasoned order, not merely on the basis of a certificate, but embarking upon the factual verification of the existence of the fact that the petitioner belongs to the Bodo Kachari community in the manner as indicated above. The authorities in the Medical Education Department may complete the admission process in respect of the seat concerned under the ST(P) category as per law i.e. in the event appropriate and acceptable report is produced before the last cut off time, the candidature of the petitioner may be considered, or otherwise fill up the seat by the next genuine candidate who is entitled to a reserved seat under the ST(P) category. The last cut off time to be decided by the authorities in the Medical Education Department.

Writ petition stands disposed of as indicated above.