

(2012) 04 UK CK 0069
In the Uttarakhand High Court
Case No : Special Appeal No. 244 of 2011

Gurukul Kangri University, Hardwar and another	APPELLANT
Vs	
Km. Parul Yadav	RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Central Educational Institutions (Reservation in Admission) Act, 2006 — Section 4
Constitution of India, 1950 — Article 340
Uttar Pradesh Reorganisation Act, 2000 — Section 86

Citation : (2012) 04 UK CK 0069

Hon'ble Judges : Barin Ghosh, C.J.; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Arvind Vashisth, for the Appellant; Parikshit Saini, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, C. J.

1. Facts of these appeals and the law applicable in relation thereto being identical, we have decided to dispose of these two appeals by this common judgment and order. In these appeals, we are concerned with two respondents before us, one of who belong to "Kahar" community and the other belong to "Yadav" community, who are seeking admission to the appellant/University for undertaking M.Sc. course.

2. Article 340 of the Constitution of India authorized appointment of a Commission to investigate the conditions of backward classes. The purpose of appointing a Commission was to enable it to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve the conditions of Backward Class communities and as to the grants that should be made for the purpose of removing such difficulties and to improve their conditions. The Commission, as contemplated by the said Article, was to be appointed by the President of India. Accordingly, by a Central Act notified on 2nd April, 1993 and known as "National Commission for Backward Classes Act,

1993", the Backward Classes Commission was constituted. The said Commission, upon discharging its continuous obligations, made recommendations to the Central Government from time to time. Central Government, accepting such recommendations, from time to time published lists of those communities who are to be acknowledged as Backward Class communities. First of such lists was notified on 10th September, 1993. In the said list, from time to time, modifications were effected. Last of such modification was effected on 16th January, 2006. In the list, so notified, it was indicated that which community of which State shall be recognized as belonging to Backward Class communities. There is no dispute that in the list, so published on 10th September, 1993, both the communities known as "Kahar" community and "Yadav" community were shown as belonging to Backward Class communities for the State of Uttar Pradesh. There appears to be no dispute, also, that while modifications to the said list was effected until 16th January, 2006, said communities were not discarded from the list of Other Backward Class communities.

3. By the Uttar Pradesh Reorganization Act, 2000, carving out a part of the State of Uttar Pradesh, the State of Uttarakhand was created. Section 86 of the said Act provided that such carving out shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961 and any other law in force immediately before the appointed day, i.e. 9th November, 2000, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day.

4. In the circumstances, central list of backward classes applicable to the State of Uttar Pradesh continued to apply to the territory of the State of Uttar Pradesh, which became State of Uttarakhand by reason of the Uttar Pradesh Reorganization Act, 2000.

5. On 4th January, 2007, the Central Educational Institutions (Reservation in Admission) Act, 2006 was notified and thereby out of the annual permitted strength in each branch of study or faculty in any Central Educational Institution, except those mentioned in Section 4 of the said Act, twenty-seven per cent of the seats stood reserved for Other Backward Classes as determined by the Central Government.

6. On 12th March, 2007, for the first time, a central list of Backward Class communities for the State of Uttarakhand was notified. In the notification, it was stated that the same was for inclusion/amendment in the central list of Other Backward Classes in respect of Uttarakhand. Notification mentioned that in respect of the State of Uttarakhand, there is no existing entry and the proposed entry intended to be included by amendment is "Rai-Sikh (Mahatam)". There is no dispute that the community "Rai-Sikh (Mahatam)" was not one of the Backward Class communities included in the central list of Backward Class communities for the State of Uttar Pradesh at any point of time. In the writ

petition filed by Deepak Kumar, central list for O.B.Cs. for the State of Uttarakhand, as downloaded from the internet, was annexed, where it was shown that the community known as "Rai-Sikh (Mahatam)" was included on 12th March, 2007 and "Gorkha" (excluding Brahmins and Kshatriya), "Gada" and "Ranwalta Jaunpuri" communities were included on 16th June, 2011.

7. In course of hearing, learned counsel for the respondents in these appeals handed over a copy of central list of O.B.Cs. for the State of Uttarakhand, wherefrom it appears that the communities "Kahar" and "Yadav" were included in the central list for O.B.Cs. for the State of Uttarakhand on 8th December, 2011. It appears that on 8th December, 2011 those communities, which were already in the central list of Backward Class communities for the State of Uttar Pradesh, were included in the central list of O.B.Cs. for the State of Uttarakhand.

8. In their respective writ petitions, respondents contended, which contentions succeeded by the judgments under appeals, that the central list of Backward Class communities for the State of Uttar Pradesh applied with equal force in the State of Uttarakhand.

9. In the present appeals, it is being contended that in view of Section 86 of the Uttar Pradesh Reorganization Act, 2000, central list of Backward Classes for the State of Uttar Pradesh applied to the State of Uttarakhand until 11th March, 2007 and since 12th March, 2007, a separate list prepared by the Central Government for Backward Class communities of the State of Uttarakhand, applied. It was contended that in such view of the matter, "Kahar and "Yadav" communities can only be treated to have been included in the central list of O.B.Cs. for the State of Uttarakhand with effect from 8th December, 2011.

10. The fact remains that in between 12th March, 2007 and 8th December, 2011, respondents were denied admission by the appellants in the seats reserved for Backward Class communities.

11. Learned counsel appearing in support of the appeals contended that the applicability of the central list for the State of Uttar Pradesh, which became applicable to the State of Uttarakhand by virtue of Section 86 of the Uttar Pradesh Reorganization Act, 2000, came to an end on 12th March, 2007, inasmuch as, on that date the competent authority, i.e. the Central Government published a list for the State of Uttarakhand showing that the existing entry in the list is Nil, and that, the proposed entry "Rai-Sikh (Mahatam)" is the only community to be reckoned as belonging to the central list of backward classes for the State of Uttarakhand.

12. We are unable to accept the said contention on the part of the appellants. It is true that in the notification dated 12th March, 2007, existing entry, insofar as Uttarakhand is concerned, was shown as Nil, but the fact remains that the purpose of the said notification was not to exclude, by way of amendment, any community from the existing list of Backward Class communities. While issuing the said notification, the Central Government was perfectly aware of Section 86

of the Uttar Pradesh Reorganization Act, 2000, a central legislation. It took note of the fact, while issuing the said notification, that in the existing list applicable to the territory of the State of Uttarakhand, "Rai-Sikh (Mahatam)" is not a community included in the central list of Backward Classes applicable to the State of Uttarakhand and, accordingly, included the said community. Subsequently, on 16th June, 2011, three more communities, which were not recognized as Backward Class communities for the State of Uttar Pradesh and, accordingly, were also not recognized as Backward Class communities for the State of Uttarakhand, were included. Subsequently, on 8th December, 2011 all those communities, which were already communities recognized as Backward Class communities for the State of Uttarakhand, for they were recognized as such communities for the State of Uttar Pradesh, were brought in the list of Other Backward Class communities for the State of Uttarakhand. As aforesaid, a look at the said notifications would amply make it clear that the same were not published for excluding any community but for the purpose of including communities named there.

13. In the circumstances, we are unable to accept the contention of the appellants that by reason of the notification dated 12th March, 2007, the competent authority, i.e. the Central Government excluded all other communities from the list of Other Backward Class communities for the State of Uttarakhand and included only "Rai-Sikh (Mahatam)" for the said State. The step taken on 8th December, 2011 belies the suggestion that by notification dated 12th March, 2007, all existing communities were excluded from the list of Other Backward Class communities and only one community, namely, "Rai-Sikh (Mahatam)" was included in the list of Other Backward Class communities. For the reasons indicated above, we find no reason to interfere with the judgments and orders under appeals and, accordingly, we dismiss the appeals. Inasmuch as, by reason of this order interim stay comes to an end, we request the appellants to comply with the orders passed on the writ petitions within a period of thirty days from today and until then, request the respondents not to press the contempt applications that they have filed.