
(2012) 11 MP CK 0009
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2091 of 2008

Hansraj Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Constitution of India, 1950 — Article 341, 342

Citation : (2012) ILR (MP) 3001 : (2013) 3 MPHT 357 : (2013) 1 MPLJ 370

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : Devendra Gangrade, for the Appellant; Puneet Shroti, Panel Lawyer, for the Respondent

Judgement

Hon''ble Shri Justice R.S. Jha

1. The petitioners have filed this petition being aggrieved by order dated 3.7.2006 passed by the High Power State Level Committee for screening of caste certificates wherein it has directed to initiate proceedings against the petitioners for cancellation of their caste certificates. The brief facts, leading to the filing of the present petition, are that the petitioners are the children of Late Shri Ram Singh, who undisputedly was a resident of Uttar Pradesh. It is also undisputed that he belonged to the Chamar Caste which was notified as a Scheduled Caste in the Presidential notification issued under Article 341 of the Constitution of India for the State of Uttar Pradesh.

It is stated that the petitioners' father was working as a Train Examiner with the railways and was posted at Jabalpur wherein the petitioner no. 1 was born on 11.4.1961 and the petitioner no. 2 was born on 16.2.1973 while the petitioner no. 3 was born on 27.6.1975 at Katni. On the basis of the entries in the service record of the petitioners' father the petitioners obtained caste certificates from the authority in the State of M.P.

On the basis of the caste certificates, the petitioner no. 1 got admission in the

Medical College as a Scheduled Caste candidate and has obtained M.B.B.S. Degree from Rani Durgavati Vishwa Vidyalaya, Jabalpur; the petitioner no. 2 has obtained a Bachelor of Engineering Degree as a Scheduled Caste candidate from Awdhesh Pratap Singh Vishwa Vidyalaya, Rewa; and the petitioner no. 3 has obtained a Bachelor of Engineering Degree as a Scheduled Caste candidate from Vikram University, Ujjain.

2. It is submitted by the learned Counsel for the petitioners that as the petitioners were born and brought up in the State of M.P and as their father belonged to the Chamar, Scheduled Caste category, which was notified as such in the State of U.P. and as the same is also notified as a Scheduled Caste in the State of M.P., therefore, the petitioners are entitled to enjoy all rights, benefits and privileges available to Chamar, Scheduled Caste, notified in the State of M.P. It is stated that some persons made a complaint against the caste certificate issued to the petitioners before the Director General of Police, Madhya Pradesh, who referred the complaint on 17.2.2003 to the competent authority for enquiry and at the same time an offence was also registered against the petitioners at Bhopal.

3. It is stated that as the petitioners' father was alive at the relevant point of time, a show cause notice was issued to him and he had filed a detailed reply specifically stating therein that the petitioners' father belonged to the Chamar caste which was notified as Scheduled Caste in the State of U.P.; that he had migrated thereafter to the State of M.P.; that all the three children were born to him in the State of M.P and as the Chamar caste was also notified as a Scheduled Caste in the State of M.P., therefore, there was no illegality or fraud committed by the petitioners in obtaining the caste certificate.

4. It is stated that the matter was ultimately taken up by the High Power State Level Committee constituted for making enquiries into such complaints, pursuant to the decision of the Supreme Court rendered in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , which issued notices to the petitioners who appeared before the Committee and also got their statements recorded before it again reiterating the stand that they had taken before the authorities and supported the same with documents. The petitioners also brought to the notice of the authorities the old circulars of the State of M.P dated 4.5.1987 and the circular dated 1.4.1998 issued by the Government of India wherein benefit to migrated Scheduled Caste persons was given by the State as well as the Union.

5. The petitioners have also brought on record and has relied upon the circular issued by the Union of India dated 16.3.2000 whereby the previous circular dated 1.4.1998 has been withdrawn prospectively and another circular issued on 30.8.2006 specifying the definition of domicile resident of the State of M.P. and has contended that no fraud or illegality was committed by the petitioners and that the caste certificates issued to the petitioners were in accordance with law.

6. It is submitted that the High Power State Level Committee, after considering the submissions of the petitioners, passed the impugned order on the basis of the undisputed fact that the petitioners' father was a Scheduled Caste of the State of U.P.; that he migrated to the State of M.P.; and that as the petitioners were not persons belonging to the Chamar, Scheduled Caste, notified in the State of M.P. but were persons belonging to the Chamar, Scheduled Caste, notified in the State of U.P, therefore, they were not entitled to the benefit of reservation in the State of M.P. On the basis of the aforesaid conclusion, the High Power State Level Committee cancelled the caste certificates dated 12.2.1994, 8.4.1994 and 12.5.2000 issued to the petitioners by the Collector and Tehsildar, Jabalpur.

7. On the basis of the aforesaid submission, it is submitted by the learned Counsel for the petitioners that the impugned order passed by the High Power State Level Committee deserves to be set aside as the petitioners undisputedly belong to the Scheduled Caste Category and were born in the State of M.P and are therefore, entitled to all the benefits available to Chamar, Scheduled Caste, in the State of M.P.

8. The learned Govt. Advocate appearing for the respondent/State, has submitted that no fault can be found nor is any infirmity discernable in the impugned order passed by the High Power State Level Committee, cancelling the caste certificate of the petitioners, as it is an admitted fact that the petitioners' father was an original resident of the State of U.P and has migrated to the State of M.P.

9. The only issue raised by the petitioner before this Court is as to whether a person who belongs to a Scheduled Caste category notified in one State is entitled to the same status and privileges on his migration to another State where the same caste has been separately notified.

10. The aforesaid issue raised by the petitioners stands conclusively decided by the Constitution Bench of the Supreme Court in the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the 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, wherein the same issue, as raised by the petitioners, was considered and decided against the petitioners and it was held as follows in para-16:

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification

may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

11. It is also apparent from a perusal of the order passed by the High Power State Level Committee that the aforesaid committee has also taken into consideration the aforesaid decision of the Supreme Court as well as the decision in the case of Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, and the subsequent circulars and clarifications issued by the Union of India and the State of M.P.

12. In view of the aforesaid, I find no illegality or infirmity in the impugned order passed by the High Power State Level Committee which is in consonance with the law laid down by the Constitutional Bench of the Supreme Court in the case of Action Committee on Issue of Caste Certificate (supra) and the same is hereby affirmed.

13. It is, however, observed that the petitioners, on the basis of the certificates issued to them have completed their studies and have been granted M.B.B.S. and Engineering Degrees and, therefore, while upholding the order passed by the High Power State Level Committee cancelling the caste certificates issued to the

petitioners, a limited relief of protection of their professional degrees is granted to them in view of the decision of the Supreme Court in the case of Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, , with a rider and clarification that henceforth in future the petitioners shall not claim any benefit on the basis of their caste by projecting themselves to be persons belonging to the Scheduled Caste Category. With the aforesaid observation, the petition filed by the petitioners stands disposed of. In the facts of the case there shall be no orders as to costs.