
(2015) 09 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 100584/2015 (GM-CC)

Kumari Veena

APPELLANT

Vs

The Commissioner for Social Welfare and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 KAR CK 0040

Hon'ble Judges : Ashok B. Hinchigeri, J.

Bench : Single Bench

Advocate : Mrutyunjay Tata Bangi, Advocate, for the Appellant; C. Jagadeesh, Special Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—The petitioner has called into question the District Caste Verification Committee's order, dated 15.12.2012 (Annexure-F) canceling the petitioner's caste certificate and the Appellate Authority's order dated 29.11.2014 (Annexure-K) confirming the same. By virtue of the impugned orders, the certificate showing the petitioner as belonging to the Holeyá (Scheduled Caste) is withdrawn. She is being treated as belonging to her father's caste i.e., Hindu Panchal.

2. Sri Mntyunjaya Tata Bangi, learned counsel for the petitioner submits that spot-verification report of the Police makes it very clear that the petitioner's mother and father were residing separately for the last 7-8 years. He submits that the petitioner is the product of an inter-caste marriage. The petitioner's mother belongs to Holeyá (a Scheduled Caste) whereas her father belongs to Hindu Panchal. As the petitioner has been residing with her mother, her caste status would be the same as that of her mother.

3. Sri Bangi brings to my notice, the Hon''ble Supreme Court's Judgement in the case of Rameshbhai Dabhai Naika Vs. State of Gujarat and Others, . He read out paras 43 and 44 from the said decision. They are extracted hereinbelow:

"43. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which his mother belonged not only by that community but by people outside the community as well.

44. In the case in hand the tribal certificate has been taken away from the appellant without adverting to any evidences and on the sole ground that he was the son of a Kshatriya father. The orders passed by the High Court and the Scrutiny Committee, therefore, cannot be sustained. The orders passed by the High Court and the Scrutiny Committee are, accordingly, set aside and the caste is remitted to the Scrutiny Committee to take afresh decision on the basis of the evidences that might be led by the two sides. It is made absolutely clear that this Court is not expressing any opinion on the merits of the case of the appellant or the private contesting respondent."

4. Sri Jagadeesh, learned Special Government Advocate appearing for the respondents submits that no document whatsoever is produced by the petitioner to show that her mother and father lived separately and that she is born in the environment of her mother. He submits that it is also the version of the petitioner and her mother that they (petitioner's mother and father) have been living separately only for about 7-8 years. When the petitioner is born 22 years ago during which time her parents were living together and when she has not suffered any disability on account of her mother belonging to Scheduled Caste, she is not entitled to claim the Scheduled Caste status and the reservation therefor. He submits that the ration card (Annexure-R1) clearly shows that the petitioner's mother Jamunawa, father Shankar Pattar, petitioner and her sister Mangala were all living together.

5. In the course of rejoinder, Sri Bangi submits that if this Court is not inclined to quash the impugned orders, a direction be issued to the respondents not to

prosecute the petitioner for claiming the reservation in question. Sri Jagadeesh, learned special counsel for the respondents resists the said request.

6. The submissions of the learned counsel have received my thoughtful consideration.

7. The decision of the Apex Court in the case of Punit Rai Vs. Dinesh Chaudhary, is of immense help for disposing of this matter. In the said reported decision, the Apex Court has expressed the considered view that if the candidate is to be considered as a member of the Scheduled Caste, he should have been accepted by the said Caste. In the instant case, there is nothing on record to show that the petitioner has ever been treated to be a member of the Scheduled Caste.

8. My perusal of the spot verification report and of the impugned orders reveals that no evidence has been brought on record to show that the petitioner has been practising the customary traits and tenets of Holeya Community.

9. The question as to whether a person belongs to a Scheduled Caste or not has to be determined by the statutory authorities. And it has been rightly done showing cogent reasons. I am not persuaded to quash the impugned orders. I dismiss this petition.

10. As far as the petitioner's request for a direction to the respondents not to prosecute her is concerned, I am informed at the Bar that the prosecution is already lodged. It is for the petitioner to take such defences as are permissible in law. It is for the petitioner to show that the petitioner had no mens rea and that her caste status was shown as Scheduled Caste by her parents even before she came to know as to which Caste she belongs to. It is for the jurisdictional criminal court to take a call on such defences after holding the trial. No order as to costs.