
(2010) 10 UK CK 0083
In the Uttarakhand High Court
Case No : Writ Petition No. 84 of 2009 (S/B)

Mrs. Jyotsana

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Succession Act, 1925 — Section 15, 16, 4

Citation : (2011) 2 UC 1593 : (2010) 2 UD 539

Hon'ble Judges : Barin Ghosh, C.J.; V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Bist, J.—We have heard the learned Counsel for the parties and perused the entire material available on record.

2. Since in both these writ petitions, common question of law is involved to be decided by this Court, therefore, both the petitions have been consolidated and are being decided by a common judgment. Writ petition No. 84 of 2009 (S/B) shall be the leading case.

3. Uttarakhand Public Service Commission (hereinafter referred to as the Commission) issued advertisement No. A-7/E-1/07-08 dated 21.04.2008 notifying 33 vacancies on the post of Civil Judge (Junior Division), out of which 5 were reserved for candidates belonging to Scheduled Caste Category, who are residents of the Uttarakhand State. It was provided that horizontal reservation shall be applicable, as per relevant Government Orders. After having applied, the petitioners appeared for the post of Civil Judge (Jr. Div.) in Civil Judge (Jr. Div.) Examination, 2008. The petitioners asserted that the petitioners were declared selected by virtue of select list issued by respondent No. 2. Mrs. Jyotsana as well as Ms. Shalini Dadar had obtained 489 marks in aggregate but Mrs. Jyotsana was placed higher in order of merit by virtue of the fact that she had obtained higher marks in the written examination.

4. Despite the fact that Mrs. Jyotsana's name had appeared at serial No. 17 in the select list and vacancies were available but she not having been appointed by the State Govt., she filed Writ Petition No. 44 of 2009 in this Court, in which the following prayers were made:

- i. Issue a writ, order or direction in the nature of mandamus commanding the respondent to include the name of petitioner in the Appointment Order No. 327/30-1-2009-25 (16) 2004 T.C.-1 Dehradun dated 19.3.2009 and to allocate here posting in pursuance to her selection for the post of Civil Judge (J.D.) in the examination of Civil Judge (J.D.) Examination of 2008.
- ii. Issue a writ, order or direction in the nature of mandamus commanding the respondent to take an appropriation action on the petitioner's representation dated 17.3.2009 (annexure No. 12 to the writ petition).
- iii. Issue a writ, order or direction which this Hon''ble Court may deem fit and proper under the circumstances of the case,
- iv. Award the cost of the petition.

5. While the aforesaid writ petition was pending in this Court an order came to be passed by the State Govt. on 25th April 2009. In this order making a reference to the Scheduled Caste certificate issued in Mrs. Jyotsana's favour on 14th June 2002, State Govt. directed District Magistrate, Bageshwar to constitute a scrutiny committee to find out as to whether the aforesaid certificate dated 14th June 2002 was correctly issued or not? The scrutiny committee upon an inquiry came to the conclusion that she should not be given the benefit of reservation in Scheduled Caste category based upon the aforesaid certificate dated 14th June 2002. The State Govt. accordingly came to the conclusion in the aforesaid order dated 25th April 2009 that it was in agreement with the report and finding of the scrutiny committee.

6. A subsequent, consequential order was passed by the State Govt. on 6th May 2009, in which after making a mention of the aforesaid fact, it took two decisions; firstly, that Mrs. Jyotsana was not entitled to the benefit of reservation as a Scheduled Caste candidate on the basis of the certificate dated 14th June, 2002 and secondly to cancel the said certificate.

7. The aforesaid two orders were passed by the State Govt. on 25th April 2009 and 6th May 2009 respectively during the pendency of W.P. No. 44 of 2009 filed by Mrs. Jyotsana. W.P. No. 44 of 2009 came up for consideration in the Court on 8th May 2009 when the following order was passed:

As the arguments were in progress, Mr. Sharad Sharma, learned Counsel appearing for the petitioner submitted that the petitioner be permitted to withdraw this petition, in the process the petitioner also relinquishing her claim vis-r-vis the caste certificate issued on 14th June 2002 in her favour but with liberty to the petitioner to apply afresh for the grant of a caste certificate in her favour to the effect that she belongs to a Scheduled Caste (Jatav). According to

Mr. Sharad Sharma, the fact of the petitioner being married to a domicile of Uttarakhand in the year 2005, apart from her now having become a domicile of Uttarakhand State on the strength of her marriage with a domicile of Uttarakhand State, her belonging to Jatav caste, which is a recognized Scheduled Caste in Uttarakhand and she would be entitled to be granted the caste certificate by a Competent/Prescribed Authority.

Mr. Sharad Sharma prays that the petitioner be permitted to withdraw this petition with liberty to apply to Competent/ Prescribed Authority for the grant of caste certificate in the light of the submission made and recorded herein above.

Writ petition is dismissed as withdrawn. Liberty prayed for is allowed.

If the petitioner applies to the Competent/ Prescribed Authority for the grant of a fresh caste certificate in her favour in the light of the submissions recorded herein above, before 4:00 p.m. by or before 12th May, 2009, the Competent/ Prescribed Authority is directed to receive and process the petitioner's said application and pass final order thereupon before 20th May 2009. The petitioner shall be entitled to a personal hearing also before Prescribed/Competent Authority. Time shall not be extended and if the final order is not passed before 20th May 2009, action shall be initiated against the Prescribed/ Competent Authority for disobeying the Court's order. While passing final order, the Prescribed/Competent Authority shall not be, in any manner, influenced by any earlier order passed on the subject by any Authority or the Government.

Depending upon the order to be passed upon petitioner's aforesaid application and the result thereof, the State Govt. is directed to take consequential action before 27th May 2009. Till 27th May, 2009 the existing vacancy in the Scheduled Caste (Women) category shall not be filled.

The order to be passed shall be communicated to the petitioner the same evening by personally serving the same upon her.

The petitioner shall have the liberty to approach this Court again if a fresh cause of action accrues to her.

Petition disposed of finally. No order as to costs.

8. After withdrawing the aforesaid writ petition, Mrs. Jyotsana applied to Tehsildar, Haridwar for issuance of caste certificate, who rejected the same vide order dated 19.05.2009 taking support of the judgment of Hon''ble the Supreme Court in "Anjan Kumar v. Union of India" reported in AIR 2006 SC 117. This order of Tehsildar, Haridwar is under challenge in Writ Petition No. 84 of 2009 (S/ B) filed by Mrs. Jyotsana. Further prayer has been made for direction to the respondents to include her name in the appointment order dated 19.03.2009 and allocate her posting. Ms. Shalini Dadar filed Writ Petition No. 46 of 2009 (S/B) for direction to the respondents to issue appropriate orders regarding her appointment to the post of Civil Judge (Junior Division), in the light of her ranking in the select list, from due date with all consequential benefits.

9. Division Bench of this Court, vide order dated 17.06.2009 passed interim order directing respondent No. 3 to issue a formal Caste Certificate to Mrs. Jyotsana with further direction to respondent No. 1 to issue appointment order in her favour. The Court also observed that the interim arrangement with respect to the issuance of the certificate as well as the appointment would be subject to the final result of the writ petition. Consequently, the petitioner-Mrs. Jyotsana has been provided appointment on the post of Civil Judge (Jr. Div.) and she is continuing by virtue of the interim order passed by this Court.

10. The respondent No. 3-Tehsildar, Haridwar, in his counter affidavit, has stated that on the basis of the application of petitioner-Mrs. Jyotsana for issuance of Caste Certificate, a report was called for. She, in the affidavit filed in support of her application, had shown her birth place at District Shahjahanpur, Uttar Pradesh and had also annexed a Scheduled Caste Certificate dated 04.08.1992 issued by Tehsildar Shahjahanpur, U.P., but she did not aver that Caste Certificate dated 04.08.1992 has been cancelled after her marriage. Hence, taking into account the facts of the case and having regard to the principle laid down by Hon"ble the Apex Court, the application for issuance of Caste Certificate filed by the petitioner-Mrs. Jyotsana was rejected. Respondent No. 2-Commission in their counter affidavit have submitted that granting, issuing, verifying and cancelling the permanent residence certificate, Caste Certificate and any other certificate issued by the competent authority, is not within the domain of respondent No. 2. The respondent No. 1-State of Uttarakhand filed its counter affidavit wherein it is stated that petitioner's father belongs to District Shahjahanpur in Uttar Pradesh. The petitioner was born in Uttar Pradesh and obtained Caste Certificate in Uttar Pradesh. After creation of State of Uttarakhand, the petitioner's father was allocated to the State of Uttarakhand. The petitioner obtained Caste Certificate in District Bageshwar on 14th June, 2002 and on the basis of this Caste Certificate, she claimed the benefit of reserve category in the examination conducted by the Commission in the year 2008. In earlier writ petition No. 44 of 2009 (S/B), on 8th May, 2009, she submitted that she may be permitted to withdraw the same and in process she also relinquished her claim vis-r-vis the Caste Certificate issued on 14th June, 2002 in her favour.

11. Ms. Shalini Dadar, petitioner in connected Writ Petition No. 46 of 2009 (S/B), who is also the intervener in the leading petition, has come up with the assertion that she belongs to "Balmiki" caste. She is permanent resident of State of Uttarakhand, her family is permanently settled at Dehradun since last more than 50 years, she was born and brought up at Dehradun and she also received her entire education at Dehradun. Vide notification dated 02.10.2008, the respondent No. 2 had issued a select list in respect of Uttarakhand Judicial Services Civil Judge (Jr. Div.) Examination, 2008. Out of three Scheduled Caste Woman Category candidates, who were declared successful, the petitioners-Ms. Shalini Dadar and Mrs. Jyotsana both had scored 489 aggregate marks out of 950. Mrs. Jyotsana, could not be granted caste certificate, therefore, she having secured highest marks amongst SC women candidates, is entitled for

appointment.

12. Mr. Sharad Sharma, Senior Advocate appearing for Mrs. Jyotsana contended that Govt. Order dated 29.03.2003 issued by the State Govt. lays down that a Caste Certificate would be issued by the Authorities, to those persons "who are residing" or taken birth in the area. Therefore, for the purpose of issuing such certificate, as stipulated in Govt. Order dated 29.03.2003, existing either of two ingredients, would be sufficient to issue a Caste Certificate. Further a SC woman would remain SC even after marriage with a man not of Scheduled Caste, thus the order dated 19.05.2009 rejecting the application for issuance of a Caste Certificate, is misconceived and erroneous, as the petitioner had applied for her own Caste Certificate and not for her children. He contended that the respondent No. 3, while rejecting application for issuance of Caste Certificate, has taken helm of the principle laid down by Hon"ble the Apex Court in the case of "Anjan Kumar v. Union of India" reported in AIR 2006 SC 117, observing that the offshoots of wedlock of a tribal woman married to a non-tribal husband-Forward Class, cannot claim Scheduled Tribe status. The reason being such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability. Mr. Sharad Sharma, Senior Advocate further contended that at the point of time when the petitioner-Mrs. Jyotsana was unmarried, she was residing under the guardianship of her father, at Bageshwar, where her father was posted in the capacity of District Judge, Bageshwar and a residential accommodation was officially allotted to her father and, at that juncture, the petitioner was issued a Caste Certificate by the Authority concerned, but thereafter, since Mrs. Jyotsana solemnized marriage with Mr. Rohit Kumar Sikhola, who is a permanent resident/domicile of State of Uttarakhand, she acquired the domicile of her husband. Mr. Sharda Sharma, Senior Advocate further contended that in view of Section 15 read with Section 16 of the Indian Succession Act, 1925, in the light of the judgment rendered by the Division Bench in Jyoti Bala's case, which stands confirmed by the Apex Court, Smt. Jyotsana, after her marriage on 14.12.2005, ensues to be the domicile of State of Uttarakhand and since the petitioner belongs to Scheduled Caste (Jatav)\\1, hence the petitioner is entitled to grant of Caste Certificate. Emphasizing upon the Govt. Order No. 22/39/1982 dated 17.05.1984, Mr. Sharma, Senior Advocate submitted that this Govt. Order deals with the issue as to what would be the effect of inter-caste marriages and adoption and the benefits accruing to a Scheduled Caste or a Scheduled Tribe, after the marriage and adoption, as the said Govt. Order in para-1 provided that a female who is SC or ST, marries an Upper Class male, will continue to derive the benefit of reservation, even after the marriage with a male of Upper Class. He also submitted that Mrs. Jyotsana had appeared in earlier examination held by the Commission in the year 2002 and 2004 as SC candidate and, similarly in 2008 examination also she is entitled to appear as SC candidate.

13. On the contrary, Mr. Manoj Tewari, Senior Advocate appearing for Ms. Shalini Dadar, has argued that Ms. Shalini Dadar and Mrs. Jyotsana, both belong to SC category and both had scored 489 aggregate marks out of 950 in the process of

selection for the post of Civil Judge (Jr. Div.). However, Ms. Shalini Dadar was placed at Sl. No. 18 while Mrs. Jyotsana was placed at Sl. No. 17 in the select list. He submitted that Mrs. Jyotsana managed to obtain Caste Certificate from District Bageshwar through deceitful means. Thus, Ms. Shalini Dadar preferred writ petition No. 46 of 2009 (S/B) seeking direction to the State Govt. to provide her appointment in view of her ranking in the select list. He contended that after the Caste Scrutiny Committee did not find favour of Mrs. Jyotsana for being appointed on the post in dispute, as such, rights of Ms. Shalini Dadar got crystallized and she became entitled for appointment against the post reserved for SC woman category. He contended that in earlier phase of litigation, bearing writ petition No. 44 of 2009 (S/B) Mrs. Jyotsana had concealed that Caste Scrutiny Committee has taken a decision against her. Moreover, on 25.04.2009, the State Government passed an order, after recording its concurrence with the Caste Scrutiny Committee, that Mrs. Jyotsana cannot be given benefit of reservation in the State of Uttarakhand. Thereafter, on 06.05.2009 the State Govt. passed another order, whereby the Caste Certificate issued to Mrs. Jyotsana from Bageshwar District was directed to be cancelled. Mrs. Jyotsana neither challenged the report of Caste Scrutiny Committee nor did she challenge the order of cancellation of her Caste Certificate in her writ petition, however, during the course of arguments, in Writ Petition No. 44 of 2009 (S/B), she not only gave up her challenge to these two orders, but she also sought permission to withdraw the writ petition itself, thus she relinquished all her rights and claims vis-r-vis the Caste Certificate issued on 14.06.2002 from Bageshwar. Mr. Manoj Tewari, Senior Advocate drew our attention to paragraph No. 13 of the parawise reply of respondent No. 1 wherein it is asserted that until the controversy with respect to Mrs. Jyotsana is resolved, Ms. Shalini Dadar's case for appointment cannot be considered. He vehemently argued that only one Caste Certificate was issued in favour of Mr. Jyotsana from Bageshwar District on 14.06.2002. Based on this Caste Certificate, she had claimed benefit of reservation in Uttarakhand State. He, in the course of advancing arguments, submitted that advertisement for the post in question was published on 30.03.2008 and as per the condition stipulated in para-5 (2) read with para-16 of the advertisement, a candidate claiming benefit of reservation, must possess a valid Caste Certificate on the date of submitting the application. Further in para-2 read with para-12 (1) of the advertisement, it is mentioned that only domicile/ permanent residents of Uttarakhand State will be entitled to reservation. On this background, he further argued that Mrs. Jyotsana cannot claim any benefit out of the judgment of the Division Bench of this Court in Smt. Jyoti Bala's case, rendered in writ petition No. 297 of 2008 (S/B) wherein this Court emphasized that a woman, after marriage, is considered to be of the same domicile as well as caste as that of her husband. He contended that, this observation is very significant, which makes the said judgment inapplicable in the case of Mrs. Jyotsana, as she is married to a person belonging to General Category, though resident of District Haridwar, inasmuch as, her subsequent marriage to a domicile of Uttarakhand in the year 2005, cannot validate the Caste Certificate, which is void-abinitio. He further

contended that the judgment rendered in the case of Smt. Jyoti Bala, needs reconsideration because Section 4 of Indian Succession Act, 1925 was not considered therein. In order to persuade us, Mr. Manoj Tewari, Senior Advocate stated that Mr. Jyotsana is relying upon her marriage to a domicile of Uttarakhand for the purpose of claiming benefit of reservation in Uttarakhand, but this benefit is not available to her on three counts, first, her husband belongs to a Forward Class, therefore, the judgment rendered in Jyoti Bala's case, is distinguishable on facts, inasmuch as, the ratio of Jyoti Bala's case does not apply to her; secondly, according to Mrs. Jyotsana, her marriage was solemnized in a temple and she could not produce any proof of her marriage, as is apparent from the report dated 07.02.2009 given by District Magistrate, Haridwar and thirdly, Smt. Jyoti Bala (petitioner in writ petition No. 297 (S/B) 2008) married to a domicile of Uttarakhand before reorganization of the State and Caste Certificate was also issued in her favour from Kashipur, immediately after her marriage.

14. It is the contention of the learned Senior Advocate for Ms. Shalini Dadar that it is well settled principle of law that domiciles of a particular State are entitled to the benefit of reservation in that State and on migration, they are not entitled to the benefit of reservation in the new State, thus domicile becomes salient factor in cases, like the case in hand. The case of Mrs. Jyotsana is out of purview of the domicile policy contained in Govt. Order dated 20.11.2001, hence, it suffice to infer that rejection of her application for Caste Certificate was justified and the challenge made by her to the rejection order dated 19.05.2009 is without any substance. He further contended that reliance placed by Mrs. Jyotsana upon Govt. Order dated 29.03.2003 is misplaced, as it only deals with the Competent Authority, who may issue the Caste Certificate. The averment made to the effect that Mrs. Jyotsana had appeared in the earlier examinations held by the Commission in the year 2002 and 2005 as SC Woman Category candidate, but said plea is unsustainable for the reasons that enquiry/verification regarding Caste Certificate is made only after completion of selection process and in her case, after due enquiry, her caste certificate was cancelled.

15. Placing reliance on the judgment of the Hon''ble Apex Court, rendered in *Sau Kusum Vs. State of Maharashtra and Others*, , Mr. Manoj Tewari, Senior Advocate argued that a member of O.B.C. will not get benefit of reservation after migration to another State, even if the State, to which he migrated, contains entry of the caste to which he belongs, in the list of O.B.C. He argued that finding of fraud has been detected by the Caste Scrutiny Committee against Mrs. Jyotsana, therefore, she is not entitled to any equitable relief under Article 226 of the Constitution of India, as very foundation of selection and appointment has collapsed as fraud and collusion, vitiate even the most solemn proceedings, as held by Hon''ble Supreme Court in the case rendered in *Bank of India and Another Vs. Avinash D. Mandivikar and Others*, . He contended that for giving benefit of reservation to a particular caste in a particular State, the disadvantages suffered by that community, are considered by the Caste Scrutiny

Committee. Further, in view of the two orders passed by the State Govt. on 25.04.2009 and 06.05.2009 and in view of withdrawal of challenge to these orders by Mrs. Jyotsana, it can suffice be inferred that she was not having any valid Caste Certificate at the time when she applied for the post in question, as it is the settled principle of law that a candidate must possess all eligibility condition on or before the last date of submitting application. Hence, even if any new Caste Certificate was issued by the Competent Authority in the year 2009, pursuant to this Court's order dated 08.05.2009, it will operate prospectively and will not cure the legal effect in the candidature of Mrs. Jyotsana for the post in question. Reliance was placed in Dolly Chhanda Vs. Chairman, JEE and Others, .

16. Having considered the submissions of the learned Counsel for the parties and having carefully examining the record, the Court finds that the father of Mrs. Jyotsana was finally allocated to State of Uttarakhand. Therefore, in our view, it cannot be said that he migrated to State of Uttarakhand. In fact, by virtue of final allocation, he acquired domicile of State of Uttarakhand. Mrs. Jyotsana, being his daughter, also automatically acquired domicile of State of Uttarakhand and is entitled for caste certificate. As per the Govt. Order dated 29.03.2003 a Caste Certificate shall be issued to those persons "who are residing" or taken birth in the area, thus for the purpose of issuing Caste Certificate, existing either of two ingredients would be sufficient for issuance of such certificate. Undisputedly, Mrs. Jyotsana became a permanent resident and a permanent domicile of Uttarakhand by virtue of her marriage to a permanent resident of Uttarakhand and the petitioner belongs to "Jatav" caste, which is recognized Schedule Caste in the State of Uttarakhand. The cumulative effect, therefore, is that the petitioner being a domicile of Uttarakhand by virtue of her having married a permanent resident of Uttarakhand State, cannot be deprived of the benefit available to a Schedule Caste of the State on the ground that she indeed is a Scheduled Caste belonging to "Jatav" Caste. Another argument of the learned Senior Counsel, Shri Manoj Tewari, that in view of withdrawing the Writ Petition No. 44 of 2009 (S/B), the petitioner Smt. Jyotsana relinquished the claim and no relief can be granted in her favour, is not, at all, convincing in view of liberty given by the Court to her to approach the Court again. Withdrawal of Writ Petition No. 44 of 2009 (S/B) with the permission of Court, cannot be used against her on the ground of technicality.

17. For the forgoing reasons, the Writ Petition No. 84 of 2009 (S/B) is allowed. Impugned order dated 19.05.2009 passed by respondent No. 3 is set-aside. Since, the petitioner Mrs. Jyotsana has been appointed on the post of Civil Judge (Jr. Div.) vide Notification dated 19.03.2009, no further direction is required to be passed. The Writ Petition No. 46 of 2009 (S/B) is dismissed. Costs easy.

18. Let certified copy of this judgment be placed in the connected writ petition.