

(2009) 07 UK CK 0008

In the Uttarakhand High Court

Case No : Writ Petition No. 2233 of 2008 (M/S)

Ms. Manisha Bharti and another

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 342

Citation : (2009) 3 UC 1738

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sri A. Rab, for the Appellant; Sri K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—This writ petition has been filed by the Petitioners challenging the order dated 28-9-2008 passed by the Principal, Government Medical College, Srinagar Pauri by which the admission granted to the Petitioners in 1st year of MBBS has been cancelled, as the caste certificate which was submitted by them was found to be "forged and fabricated", according to the Principal. It is an admitted case that the Petitioners were not heard by the Principal or any other authority before the impugned order was passed.

2. The case of the Petitioners is that they belong to a Scheduled Caste community which is notified as a Scheduled Caste under the Constitution (Scheduled Caste) Order, 1950 as "Chamar" for the State of Uttar Pradesh and consequently after the creation of State of Uttarakhand under the U.P. Reorganisation Act, 2000, the caste "Chamar" was notified as Scheduled Caste for the State of Uttarakhand as well. The case of the Petitioners is that their father was appointed as a technician on 30-11-1989 in Government Hospital, Mussoorie. His two daughters which are the present Petitioners, namely, Ms. Dharmavati Bharti (Petitioner No. 2) and Ms. Manisha Bharti (Petitioner No. 1) were born on 10-9-1987 and 17-7-1989 respectively at "Mussoorie". The

Petitioners have annexed their birth certificate obtained from the Nagar Palika Parishad, Mussoorie which shows that the Petitioners were born on the aforesaid dates at "Mussoorie" in Uttarakhand. The father of the Petitioners who was a lab technician in the year 1989 in "Mussoorie", when "Mussoorie" was a part of erstwhile State of Uttar Pradesh, has submitted his caste certificate which he had obtained from district "Basti". It is also an admitted case that prior to coming to "Mussoorie", the father of the Petitioners belonged to "Basti" and as such he had obtained caste certificate from "Basti". Prior to November 9, 2000, which is the appointed day when the new State of Uttarakhand came into existence, both "Mussoorie" (in Dehradun) as well as "Basti" were part of the erstwhile State of Uttar Pradesh. After November 9, 2000, "Mussoorie" has become a part of Uttarakhand, whereas "Basti" is a part of present Uttar Pradesh.

3. Now apart from the fact that once the Petitioners have got admission in the medical college, certain rights vested with them and, therefore, opportunity of hearing and show cause was absolutely necessary, which has been denied to them, and on this count as well, the propriety of the order dated 28-9-2008 has to be examined. However, what goes to the root of the matter is whether the Petitioners can claim caste benefit such as reservation and admission into schools and colleges as member of Scheduled Caste Community. In case this Court comes to the conclusion that these benefits are applicable to the Petitioners then in any case this writ petition has to succeed.

4. Earlier the Petitioners had filed a writ petition before this Court bearing Writ Petition No. 1969 of 2008 (M/S) wherein they had challenged the same order dated 28-9-2008 of the Principal, Government Medical College, Srinagar, Pauri and had stated before this Court that the admission of the Petitioners has been cancelled without showing any cause or giving any opportunity of hearing to them. The father of the Petitioners who was a government servant belongs to Scheduled Caste community and they are residing in Uttarakhand for last 20 years. This writ petition was disposed of by the learned Single Judge by order dated 6-11-2008 with the direction that the Petitioners may make a fresh representation which shall be decided by the District Magistrate, Dehradun. The District Magistrate has disposed of the representation of the Petitioners stating that the Petitioners cannot be given the benefit of the Scheduled Caste in the State of Uttarakhand on the logic that the Petitioners derive a caste from the father who has a caste certificate from "Basti" which is not a part of the State of Uttarakhand and, therefore, any caste benefit if at all is to be given, can be given to the Petitioners only in the State of Uttar Pradesh and not in the State of Uttarakhand. The District Magistrate has cited certain rulings of the Hon'ble Supreme Court, namely, Action Committee on Issue of Caste Certificate to Schedule 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 law laid down by the Hon'ble Supreme Court is that if a particular caste is notified as a Scheduled Caste or Scheduled Tribe in more than one State, even then the

benefit of that caste will be given to the person if he belongs to that State, as the notification of a caste by the President is in reference to the State which is done in consultation with the Governor of that State and, therefore, the caste benefits can be given only in that State and not in any other State. The aforesaid decision of the Hon"ble Supreme Court has in fact been reiterated by the Apex Court in many subsequent cases and it is in fact the law of the land. However, in the present case, the facts are so glaringly different that the course adopted by the District Magistrate, does not seem to be a proper course. Moreover, on the facts of the present case there is no proper reliance on the decision of the Hon"ble Supreme Court.

5. It is an admitted fact that the Petitioners were born in the State of Uttarakhand and have been residing in the State of Uttarakhand for the last 20 years or so. There are Government Orders of the State of Uttarakhand by which one can claim a certificate of residence in the State of Uttarakhand, if one is residing in the State of Uttarakhand for the last 15 years and, therefore, the Petitioners being the "ordinary residents" of Uttarakhand are in any case liable to claim their caste benefits from the State of Uttarakhand. Apart from this, a distinction has to be drawn in the present case where the complexity of reorganization of State would also be an issue.

6. In *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, , a case had come before the Hon"ble Supreme Court which had the following facts:

The Appellant was an original resident of Village Sawargaon, District Chhindwara in the State of Madhya Pradesh, however, after the reorganization of States in the year 1956 a part of the said area of "Chhindwara" namely "Chandrapur" which was originally in the State of Madhya Pradesh became a part of the State of Maharashtra. The Appellant belonged to a Scheduled Tribe called "Halba" which was reorganized prior to this reorganization as a Scheduled Tribe for the Madhya Pradesh and after reorganization when "Chhindwara" was included in the territory of Maharashtra, the said ""Halba" was again recognized as Scheduled Tribe for the State of Maharashtra as well. It was not a dispute in that case that the Appellant was born and brought up and educated in the district of "Chhindwara". However, subsequently he applied for a job in Maharashtra State Electricity Board for the post of Junior Engineer (Civil) against a non-reserved vacancy. Further, in the year 1987 the Appellant was promoted to officiate as Assistant Engineer (Civil) against a reserved vacancy which was reserved for a Scheduled Tribe, on the basis of the certificate he had obtained for "Halba" from the State of Madhya Pradesh. Later, this Appellant received a show; cause notice dated 22-8-1988 by the authorities asking as to why he should not be reverted from the post of Assistant Engineer to that of Junior Engineer as he was pot entitled to the benefit of reservation for the Scheduled Tribe in the State of Maharashtra. The Appellant gave his explanation which did not find favour with the authority and was actually reverted from the post of Assistant Engineer to that of Junior Engineer. Aggrieved, he filed a writ petition under Article 226

before the Bombay High Court which was dismissed and it was held that the Petitioner belong to Scheduled Tribe "Halba" which is though recognized as Scheduled Tribe in Maharashtra but these rights cannot be granted to him since he belongs to Madhya Pradesh.

7. Aggrieved by the order of the Bombay High Court, the Appellant preferred an appeal before the Hon'ble Apex Court. The Apex Court referred to the earlier law laid down on the said subject (including the one relied upon by the District Magistrate in its order dated 15-12-2008) and stated that undoubtedly a Scheduled Tribe notified in one State will not be given benefits in another State having regard to the plain expression "in relation to that State" in Article 342 of the Constitution. The decisions relied upon were that 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, , and U.P. Public Service Commission, Allahabad Vs. Sanjay Kumar Singh, . However, para 5 and 6 of the judgment in Sudhakar Vithal Kumbhare case, where a distinction has been drawn in cases where the two states were one and have split only after a reorganization, and the relevant paragraphs are quoted below:

5. But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the Appellant being a Scheduled Tribe known as Halba/ Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in Chhindwara region, a part of which, on States' reorganization, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States' Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in

the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/ Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said tribe Halba/ Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.

6. Here we find that the Maharashtra State Electricity Board acting upon the direction of the State Government has reverted the Appellant without refer(sic) the matter to the Scrutiny Co(sic)ittee which was not the corre(sic) way to deal with the Appellant's case. In fact, in such a situation the employer was required to refer the question before the Scrutiny Committee which admittedly had been constituted and established for coming to the matter.

8. On the basis of the aforesaid, the above appeal was allowed to the extent that the matter was referred to the Scrutiny Committee, relying upon the case of Madhuri Patil.

9. We have a somewhat similar situation here. In fact the case of the Petitioners is on a better footing. The caste "Chamar" was a Scheduled Caste in reference to State of Uttar Pradesh and was also so in consultation with the Governor of the erstwhile State of Uttar Pradesh, way back in year 1950, when the jurisdiction of the Governor also covered the area which is now in Uttarakhand. After the reorganization of Uttar Pradesh in the year 2000, there were no fresh consultation with the Governor of Uttarakhand before the caste "Chamar" could be declared as a Scheduled Caste also for Uttarakhand. Therefore, the law which has been laid down by the Hon"ble Apex Court in the two cases referred above, namely, 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, , and U.P. Public Service Commission, Allahabad Vs. Sanjay Kumar Singh, has to be liberally construed in the context of those States which have recently reorganized, as in the case of Uttar Pradesh and Uttarakhand otherwise there may be cases where instead of providing benefits to those who are socially deprived, an unnecessary hardship will be imposed upon them.

10. What is even more important here is the fact that Constitution of India makes no distinction between its citizens on the basis of their residence. In view of Articles 14, 15, 16 and 19 of the Constitution of India while interpreting matters such as residence, domicile, place of birth, etc., a liberal and practical approach has to be practical rather than a narrow, regional and parochial approach. In fact Article 16(1) & (2) of the Constitution of India further elaborate on this concept and remove any ambiguity, if any, on this subject where it states that the State shall not discriminate its citizens, inter alia, on the basis of place

of birth or residence. Article 16(1) & (2) are reproduced below for ready reference:

16. Equality of opportunity in matters of public employment-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any officer under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

11. It is therefore the responsibility of the authorities, whenever they have an occasion to deal with matters such as the one being agitated in the present writ petition, that they must adopt a liberal and pragmatic approach rather than a technical and rigid one. It is important to have a strict approach to the letter of law as well as to its spirit. Merely a strict adherence to "law" as divorced from its spirit, results in a situation like the one presently before this Court. This is precisely what has been said by the Division Bench of this Court in Writ Petition No. 316 of 2008 (S/ B) Dharmendra Prasad v. State of Uttarakhand & two others, which will be shortly referred to.

12. Apart from this, the Petitioners have also relied upon the judgment of Hon"ble Supreme Court in Union of India and Others Vs. Dudh Nath Prasad, . In Dudh Nath Prasad (supra) the Hon"ble Apex Court had again made a liberal interpretation of concepts such as domicile and residence and in that case as well although the Respondent was an original resident of Bihar where the caste "Nunia" was not notified as a Scheduled Caste was given the benefit of this caste in West Bengal since his parents have been residing in West Bengal for more than 30 years or so. Based on these parameters of law this Court is also of an opinion, that while deciding the matters of domicile and permanent resident a liberal and reasonable approach should be adopted by the authorities rather than straight jacket approach.

13. It is also necessary to state that matters such as the present case, had come up before the Division Bench of this Court in Writ Petition No. 316 of 2008 (S/B) Dharmendra Prasad v. State of Uttarakhand & two others which the Petitioner was born on 19-6-1976 in Haridwar, which is now a part of Uttarakhand and his father had joined services in BHEL, Haridwar in the year 1976 though he originally belonged to a Scheduled Caste namely "Dhanuk" in district Nalanda in Bihar. He migrated to Haridwar in Uttar Pradesh and gained employment in BHEL. The caste "Dhanuk" is also notified as Scheduled Caste in Uttar Pradesh and this Petitioner was claiming benefit of Scheduled Caste which was notified to them. The Division Bench had to say as follows:

7. The expression "original resident" (sic) has not been defined anywhere. In the absence of a specific definition of this expression, we have to adopt a meaningful as well as a purposeful and constructive approach to extend a construction so as to define this expression to mean such persons who have been and or (sic)rily

residing in the (sic) of Uttarakhand. One asp (sic) which can be taken in const(sic)ing the aforesaid interpretation (sic) he include the period of (sic) of 15 years so as to (sic) he purpose and meaning of the expression "original resident" (ewy fuoklh). By adopting the aforesaid approach and in extending the aforesaid construction to the expression "original resident" (ewy fuoklh), we cannot help noticing that in the present case, the Petitioner was born in the State of Uttarakhand in the year 1976 to his parents, who had been Jiving in the State before that date. We cannot help noticing the fact also that the Petitioner, after his birth, took up his entire education in the State of Uttarakhand and, thereafter, applied for selection while residing in the State of Uttarakhand. By no stretch of imagination nor by adopting any plausible stand, can it be argued that such a person should not be treated as a "original resident" (ewy fuoklh) of Uttarakhand State. Any such argument has to be out rightly rejected.

8. Article 14 of the Constitution of India strikes at any arbitrary action of the executive. It also disapproves taking of a stand by the executive, which is not based on objective criteria. The unreasonableness of a stand taken by the executive is also not approved by Article 14 of the Constitution. We have no hesitation in holding and saying that the stand taken by the Respondent State in the present case to the effect that the Petitioner cannot be included in the Category of "original resident" is totally unacceptable by us.

14. In For these reasons also, the order dated (sic) 12-2008 of the District Magistrate (sic) has passed in pursuance of the dire(sic) this Court is not an order in the (sic) of law presently in force in State of Uttarakhand nor does it go (sic) true tenor and tone of the Const (sic) of India as visualize in Article 14, Article 19 and Article 21 and, therefore, this order is liable to be quashed. The order of the Principal, Government Medical College, Srinagar, Pauri dated 28-9-2008 in any case cannot stand as the Petitioners were rightly given admission as they belong to the Scheduled Caste community. The order of the Principal is also in violation of principles of natural justice and fair play and, therefore, is liable to be quashed and is hereby quashed. Another important fact which must be taken note of is that in order dated 28-9-2008 the words used are "forged and fabricated", however the caste certificates have been granted to the Petitioners by authorized persons in accordance with law. Therefore, once the caste certificates which have been issued in favour of the Petitioners, they are valid certificates until they are recalled or cancelled. Since they have not been cancelled, revoked, modified or set aside by any authority therefore there is no good ground for canceling the admission of the Petitioners. The order of the Principal is bad to this extent as well. These caste certificates have the validity of law and are not "forged or fabricated" as they have been termed by the Principal in his order dated 28-9-2008.

15. In view of the aforesaid, order of the Principle dated 28-9-2008 is set aside. Since the order of the Principal has been quashed, the necessary consequence would be that the admission of the Petitioners has to be restored in the medical

college. However, for the reasons of prudence and practice, it is directed that the Petitioners shall commence their studies of M.B.B.S. Course from the academic session 2009-10 which according to the statement made at the bar by the Learned Counsels for the parties, will commence in July-August, 2009.

16. It is also made clear that any fees or expenses which have been deposited by the Petitioners in lieu of the earlier admission shall be adjusted for the new academic session.

17. With these observations, writ petition is allowed.