

(2008) 09 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition No. 634 of 2008

Ningthoujam Samarendra Singh and Others	APPELLANT
Vs	
State of Manipur and Others	RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Constitution of India, 1950 — Article 15(2), 17, 226, 341(1), 341(2)

Citation : (2009) 1 GLT 307

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Advocate : Serto T. Kom, for the Appellant; Th. Ibohal, H.S. Paonam, A. Mohendro and Amarjit Naorem, for the Respondent

Final Decision : Dismissed

Judgement

Maibam B.K. Singh, J.—Heard Mr. Serto T. Kom, learned Counsel appearing for the Petitioners, Mr. Th. Ibohal, learned Addl. Govt. Advocate appearing on behalf of the Government Respondents, Mr. H.S. Paonam, learned Counsel appearing on behalf of the Respondents No. 7 to 10, Mr. A. Mohendro, learned Counsel appearing on behalf of the Respondent No. 11 and Mr. Amarjit Naorem, learned Counsel appearing on behalf of the Respondent No. 3.

2. This writ petition has been filed praying mainly for quashing the Scheduled Caste Certificates issued in favour of the Respondents No. 6 to 10 along with the combined merit list of MBBS/BDS CET-2008 so far as the above said Respondents are concerned and also for directing the Respondents No. 1 and 2 to allow the Petitioners to get Scheduled Caste quota of MBBS/BDS for the year 2008 in place of the said Respondents No. 6 to 10.

3. There is no dispute in respect of the following facts:

The Petitioners and the Respondents No. 6 to 10 appeared in the Entrance Examination of MBBS/BDS CET-2008 conducted by the Directorate of Health Services, Manipur as Scheduled Castes candidates. In the combined merit list of

the said examination, the name of the Respondent No. 6 appeared at Sl. No. 66 and name of the Petitioner No. 1 appeared at Sl. No. 76. The names of the Petitioners No. 2 and 3 appeared at Sl. Nos. 175 and 193 respectively in the said combined merit list of the examination and the names of Respondents No. 7 to 10 appeared at Sl. Nos. 97, 152, 176 and 189 respectively in the same list. As per the select list of candidates prepared purportedly on the basis of the combined merit list of the said examination, the Respondent No. 6 was the only candidate selected for the category of Scheduled Castes and the Petitioner was selected as the only wait list candidate for the same category.

4. It is the case of the Petitioners that Scheduled Caste certificates issued by the concerned authorities in favour of the Respondents No. 6 to 10 on the basis of which they appeared as Scheduled Caste candidates in the said examination were issued illegally and as such, the said Respondents were wrongly and illegally categorized as Scheduled Castes candidates in the said examination. Consequently, according to the Petitioners, the Petitioner No. 1 is entitled to be selected as a Scheduled Caste candidate for the course of MBBS/BDS in place of Respondent No. 6. The basis of the case of the Petitioners is that only members of the Loi communities living in the 8 (eight) recognized Loi villages, namely, Sekmai (Avang), Phayeng, Khurkhul, Koutruck, Leimaram, Kwotha, Leimaram Khunou and Andro are entitled to claim as members of the Scheduled Castes in the State of Manipur. According to the Petitioners, since the Respondents No. 6 to 10 do not belong to Loi communities living in the said 8 (eight) recognized Loi villages, they are not entitled to Scheduled Castes status. In other words, according to the Petitioners no person claiming to belong to Loi community of a village other than any of the said 8 villages can claim the status of Scheduled Castes in the State. It is also to be noted that in the course of hearing, the Petitioners counsel submission is mainly directed as against the Respondent No. 6 on the ground that the said Respondent being not entitled to the status of Scheduled Caste, the Petitioner No. 1, who is a member of the Loi community of one of the said 8 villages must be selected for the course of MBBS/BDS-2008 on the basis of the combined merit list in place of the Respondent No. 6.

5. For the purpose of disposal of this case, the consideration of the question, if the Respondent No. 6, who claims to be a member of the Loi community and now residing at Naoremthong Khumanthem Leikai, can legally claim to be a member of Scheduled Castes on the basis of the Scheduled Castes certificate issued by the Deputy Commissioner, Imphal West District, may be sufficient. In case of finding that the Respondent No. 6 is a member of the Scheduled Castes of the State of Manipur under the relevant law, his selection under the category of Scheduled Castes for the course of MBBS/BDS-2008 is not to be disturbed and as such, there will not be any need for consideration about the entitlement of any of the reliefs prayed by the Petitioners.

6. Article 366(24) of the Constitution of India defines the terms "Scheduled Castes". Further, Article 341(1) gives the power to the President in respect of any

State or Union Territory to identify the Scheduled Castes in consultation with the Governor of the State and issue a public notification specifying the Scheduled Castes for the purpose of the Constitution. The Scheduled Castes so specified shall be subjected to the law made by the Parliament under Article 341(2). There is no dispute that the Presidential notification issued under Article 341(1) is final and conclusive and it cannot be added to any caste or subtracted by any action either by the State Government or by a Court on adducing of evidence. In the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956, a copy of which is at Annexure-A/4 of the writ petition, as well as in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, there is no area restriction regarding treating "Lois" as Scheduled Castes in the State of Manipur. Prima facie, "Lois" residing anywhere in the State of Manipur are to be treated as Scheduled Castes till the existing provisions in this connection are amended in accordance with law.

7. In fact, the question if the Lois other than the Lois residing in the said 8 villages are entitled to claim their status as Scheduled Caste was considered by the Hon"ble Apex Court in Heikham Surchandra Singh and Others Vs. Representative of "LOIS" Kakching, Manipur (A Scheduled Caste Uplift Body) and Others, In the opinion of the Hon"ble Apex Court, so long as Presidential notification remains unamended, everyone who is declared as "Lois" is entitled to the status of Scheduled Castes. Accordingly, the opinion of the Hon"ble Apex Court is to the effect that since, as per the relevant Presidential notification, there is no area restriction regarding treating "Lois" in the State of Manipur as Scheduled Castes, "Lois" residing anywhere in the State of Manipur are to be treated as Scheduled Castes. However, Hon"ble Apex Court took account of the peculiar factual situations prevailing in the State of Manipur as historically collected from the evidence by the two Commissioners appointed by the State Government before 1956 (Amendment) Act and also the latest Commission whose report was submitted on 28.02.1993. After referring to the findings of the said two Commissions, the Hon"ble Apex Court held at Paras No. 15, 16, 17 as follows:

15. It would thus be seen that the Lois who are Scheduled Castes have been subject to the disabilities mentioned by the two Commissioners, Aiyer and Mathew and accepted by the Statutory Commission. In this behalf, Articles 17, 15(2) and 46 furnish the unimpeachable historical evidence of disabilities to which Scheduled Castes are subjected to and the Constitution aimed to remedy by distributive justice, equality of opportunity and of status with dignity of person in socio-economic and political democracy and to prevent their exploitation. They would furnish as guiding principles to solve the given problem. As stated earlier, the question is who are entitled to the status of Scheduled Castes? It is not in dispute that though the Lois residing in 26 villages other than the eight named villages mentioned hereinbefore, had not claimed the status as Scheduled Castes until March 1992, until the Commissioner of District Thoubal and his subordinates had issued the social status certificates, for the first time, only to the 2500

residents of Kakching, until then, they too did not claim that status. Except the resident in Kakching Village, no other residents in other 17 villages have claimed the status as Scheduled Castes even after 1992 till date. This material has not been contradicted; nor can it be contradicted. The Commission had pointed out that at the direction of the Government one Rameshwar Singh was issued social status certificate as Schedule Caste without any enquiry. That would show the enormity of the misuse of the power to claim false social status.

16. Under these circumstances, though the High Court was right that until the amendment to the List has duly been made, the Lois would be entitled to the status of Scheduled Castes, before issuance of the certificate of status the competent officer should enquire whether the applicant is subjected to the disabilities which the Scheduled Castes have been suffering. All those who satisfy these criteria alone are entitled to the issuance of certificates until the amendment is duly made by Parliament under Article 341(2) of the Constitution. The High Court, therefore, was not right in the conclusion in para 34 that though the certificates issued by the Commissioner including those 2500 certificate-holders were valid, they would be subject to the law made by Parliament. Anyone who claims the status of scheduled Castes should satisfy the same criteria indicated by the Commissioners until the amendment is duly made by Parliament under Article 341(2) of the Constitution and an enquiry should be conducted in that behalf.

17. The State Government is directed to furnish to the President the report submitted by the Commission, referred to hereinbefore, and all other material for appropriate action by the Central Government by laying before Parliament to effect necessary amendment under Article 341(2) of the Constitution.

8. In the light of the above decision of the Hon'ble Apex Court, I have no hesitation in holding that the basis of the Petitioners' case that only members of the Loi communities living in the said 8 recognized Loi villages are entitled to claim as members of Scheduled Castes in this State is not acceptable in law. As per existing relevant provisions, the Lois residing anywhere in the State of Manipur are, prima-facie, to be treated as Scheduled Castes in the State of Manipur. However in view of the peculiar factual situations prevailing in the State of Manipur as historically collected from the evidence of the two Commissioners appointed by the State Government before 1956 (Amendment) Act and also the latest Commission whose report was submitted on 28.02.1993, before issuance of the certificate of status, the competent officer should enquire whether the applicant is subjected to the disabilities which the Scheduled Castes have been suffering. As already seen from the judgment of the Hon'ble Apex Court, all those who satisfy these criteria alone are entitled to be issuance of certificates until the amendment is duly made by the Parliament under Article 341(2) of the Constitution of India.

9. In the present case, it is ascertained that the Respondent No. 6 was treated as a Scheduled Caste candidate on the basis of the Scheduled Caste certificate (a

copy of which is at Annexure-A/3 of the writ petition) issued by the Deputy Commissioner Imphal West District. As per the said certificate, the Respondent No. 6 belongs to Loi community and at the relevant time, he is a resident of Naoremthong, Khumanthem Leikai, Imphal West. Further, as per affidavit-in-opposition filed by the Respondent No. 4 (the Deputy Commissioner, Imphal West), the Scheduled Caste certificate issued in favour of the Respondent No. 6 was issued after being satisfied about the fact that the said Respondent belongs to Loi community and also about the fulfillment of the conditions of disabilities. It is also stated in the said affidavit-in-opposition of the Respondent No. 4 to the effect that necessary enquiry was held before issuance of the said certificate in favour of the Respondent No. 6. The relevant paragraphs No. 9, 10, 11 and 12 of the said affidavit-in-opposition of the Respondent No. 4, who issued the said certificate in favour of the Respondent No. 6, are reproduced below:

9. That recently the Respondent No. 6 filed an application on 1st Sep, 2008 to the Deputy Commissioner, Imphal West for causing verification of Schedule Castes certificate issued in his favour. The office of the Deputy Commissioner, Imphal West sent copy of the petition filed by the Respondent No. 6 to the Deputy Commissioner, Bishnupur vide letter No. DC/IW/10/5/6/94 pt-11/94 dated 3rd Sept., 2008 for verification of Schedule Caste Certificate and also for furnishing a detailed report stating legality of the claim of the Respondent No. 6 as the area in question is within the jurisdiction of the Bishnupur District.

Copies of the application filed by the Respondent No. 6 and the forwarding letter dated 3rd Sept. 2008 are enclosed herewith and marked as Annexure-E/3 and E/4 respectively.

10. That I beg to state that the completion of the process for re-verification of the Schedule Caste Certificate in respect of the Respondent No. 6, the Deputy Commissioner, Bishnupur District, Manipur sent a letter No. 12/2/Veri/SC/2005-DCS dated 11th Sept. 2008 addressed to the Deputy Commissioner, Imphal West, Manipur stating that the necessary re-verification in respect of Shri Salam Gunachand son of Shri S. Ibomcha Singh has been conducted through the concerned Sub-Divisional Officer, Moirang by deputing Sub-Deputy Collector for spot verification.

Copy of the letter dated 11th Sept., 2008 along with a letter being No. 22/SDO(M)/C/P/2000/25 dated 6th Sept., 2008 of the SDO, Moirang addressed to the Deputy Commissioner, Bishnupur and a copy of the letter No. 14/SDC(M)/C-T/2000/31 dated 6th Sept., 2008 of the SDC, Moirang addressed to the SDO, Moirang are enclosed herewith and marked as Annexures-E/5, E/6 & E/7 respectively.

11. That I beg to submit that on perusal of the re-verification of Schedule Caste Certificate issued in favour of the Respondent No. 6, fact is established that the Respondent No. 6 and the predecessors were originally residents of Chingmei Village of Thanga and presently residing at Naoremthong Khumanthem Leikai. It

is also a fact that the office of the SDO, Moirang conducted enquiry in April, 2007 before the issuance of the Schedule Caste Certificate ascertaining the conditions of disabilities in respect of Lois of Thanga village. And on the basis of that the office of the Deputy Commissioner, Bishnupur issued the Certificate in 2007. It is also further established that the certificate in Annexure-E/2 was also issued after verification by the office of the Deputy Commissioner, Imphal West to the SDC, Imphal West who also submitted a report on 20th August, 2008.

12. That I also beg to submit that on further re-verification the office of the concerned Deputy Commissioner, Bishnupur also established that the Respondent No. 1 and his predecessors are residents of Chingmei, Thanga, village and his clan of Salam and the disabilities mentioned by the Hon'ble Supreme Court are also fulfilled and the necessary enquiries were also conducted before issuance of the Caste Certificate in favour of the Respondent No. 6 has been challenged by the writ Petitioner. On that also it has been re-ascertained that the Respondent No. 6 belongs to a Loi of Thanga. And on field enquiry it has been established that he fulfills all the conditions of disabilities of Lois.

10. The records including the enquiry file are perused. It is well settled that though jurisdiction under Article 226 of the Constitution of India is wide, but nevertheless, it cannot be exercised as an appellate jurisdiction and it is not open to this Court to appreciate the evidence and come to its own conclusion as long as it is shown that fact finding authority has proceeded properly and correctly and appreciated the evidence in a reasonable manner. In other words, the approach of the fact finding authority not being perverse and unreasonable and not being vitiated by non-consideration of the evidence on record, the fact that this Court can come to a different conclusion on the very same evidence would not be a ground for interference.

11. In the light of the above discussions and on perusal of the materials before the Court, I do not find sufficient basis for interfering with the Scheduled Caste Certificate issued in favour of the Respondent No. 6 by the Respondent No. 4. It cannot be said that the said certificate was issued illegally. In the result, the position of the Respondent No. 6 as a select under the category of Scheduled Castes on merit for the course of MBBS/BDS -2008 is not to be disturbed. In my considered opinion, there is no need of considering about the status of the Respondents No. 7 to 10 as well as about the status of the Petitioners in detail.

12. This writ petition is dismissed as having no merit. No order as to costs.