
(2004) 09 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No's. 4946, 5413 and 6128 of 2004

Peter Engti and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-09-2004

Acts Referred:

Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1983 — Rule 2, 3, 3(2)
Constitution of India, 1950 — Article 15(2), 15(3), 15(4), 16(4), 17
International Covenant on Civil and Political Rights, 1966 — Article 17
Medical College of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules, 1996 — Rule 2, 3, 3(2), 5
Representation of the People Act, 1950 — Section 20
Telegraph Act, 1885 — Section 29, 5(2)
Universal Declaration of Human Rights, 1948 — Article 12

Citation : (2005) 2 GLT 1

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : M. Sarania and B. Deka, G.N. Sahewalla, A.K. Goswami, P. Bora, Aslam, D. Senapati and T. Tamuk, for the Appellant; P.K. Mushahary, G.N. Sahewalla, A.K. Goswami, P. Bora, Aslam and D. Senapati, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—As agreed to by the learned Counsel for the parties, the three writ petitions by and between the same parties were heard together for a decision on the only issue as to whether the Respondent Nos. 8 and 10 in W.P.(C) No. 4946/2004 are entitled to get themselves admitted in First Year M.B.B.S. Course as ST(H) category candidates.

2. The Petitioner has questioned the very eligibility of the said two Respondents to appear in the Common Entrance Examination (CEE). The relevant provisions relating to conditions for admission and eligibility for appearing in the CEE as laid down in Rule-3 of the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Under-Graduate Students) Rules 1996 are quoted

below:

3. Conditions for admission and Eligibility for appearing in the common entrance examination.

(1) Subject to the provisions of Rule 5, all candidates seeking admission into the MBBS Course in any of the Medical Colleges or the BDS course in the Regional Dental College, Guwahati shall have to appear in the Common Entrance Examination.

(2) No candidate shall be eligible for appearing in the Common Entrance Examination unless he;

(a) is a citizen of India.

(b) is a permanent resident of Assam; provided that nothing contained in this clause shall be applicable to the sons and daughters of the employees of the Govt, posted outside Assam including the officers of All India Services allotted to Assam.

3. Since the only issue involved is in re-spect of fulfilment of the above requirements of conditions and eligibility to appear in the CEE of the Respondent No. 8 and 10 as ST(H) candidate, the definition of "SC or ST" under Rule 2(k) of the aforesaid rules is quoted below:

(k) "Scheduled Castes or Scheduled Tribes" means the Schedule Tribes of Assam as specified by the Constitution (Scheduled Caste) Order, 1950 or the Constitution (Schedule Tribes) Order, 1950 as amended up to the last date of submitting the application for the Common Entrance Examination.

4. The Petitioner appeared in the CEE held on 6.6.2004 and pursuant to such Examination the provisional select list was published on 1.7.2004. The selected candidates were directed to appear before the Selection Board on the date and time specified. The select list was published category-wise. The name of the Petitioner was not included in the select list. The Petitioner could collect his marks obtained in the Examination which is stated to be 112. According to the Petitioner, his name was illegally dropped from the select list, as in fact, he has passed the Examination with the rank 3103.

5. Being dissatisfied with the results declared by the Respondents, the Petitioner who is ST(H) candidate made queries in respect of the select list containing the names of ST(H). The Petitioner, although initially made allegations in the writ petition that the private Respondent Nos. 4 to 10 do not belong to ST(H) category and thus were included illegally in the list as ST(H) candidates, but eventually confined his such allegations only in respect of Respondent Nos. 8 and 10. His contention is that, if these two candidates who according to him, are not entitled to get selection and admission as ST(H) candidates, are excluded from the category of ST(H), with the marks he has obtained, his name is bound to be included in the list. Be it stated here that the said two Respondents have been

included in the waiting list. The Petitioner has made grievance against the inclusion of Respondent No. 8 in the select list in paragraph 9 of the writ petition which is quoted below:

That the Petitioner begs to state that Rule 5(a) of the Medical Colleges of Assam and Regional Dental Colleges (Regulation of Admission Under-Graduate Students) Rules 1996 provides that 15 MBBS seats shall be reserved for the Northeastern council for distribution among the North eastern States except Assam. It means that out of total seats 15 seats are kept reserved for North Eastern States and for those 15 seats of the other North Eastern States candidates who are seeking admission need not to appear in the common entrance examination. Further, it may be presumed that the candidates of other North Eastern States except Assam who are belong to ST(H) can not be selected/ admitted against the ST(H) seats meant for Assam ST(H). In the select list dated 1-7-2004 few candidates have been selected in the ST(H) reserved seats from the out side of State of Assam. Mention may be made that the Roll Nos. nearing 02755, 08490, 07185 and 04821 are in the provisional select list belongs to State of Meghalaya.

6. Although, the aforesaid allegations also covered the Respondent No. 10, but the Petitioner in his subsequent writ petition, i.e. W.P.(C) No. 6128/2004 has made allegations against the said Respondent in paragraph 6 and 10 to 15 which are quoted below:

6. That the Petitioner begs to state that he filed a representation before the Respondent No. 1 for cancellation of the non S/T(H)s" as well as other doubtful S/T(H)s" names from the provisional select list dated 1.7.2004, but Respondents has not taken any action to dispose the said representation. Therefore, finding no alternative, he approached this Hon"ble Court filing a writ petition being W.P.(C) No. 4946/04. After hearing the Counsels, this Hon"ble Court is pleased to pass an order on 14.7.2004 that in case of any admission to the MBBS course against the quota, same shall be subject to the outcome of the final order to be passed in the writ petition. And in the aforesaid writ petition the present private Respondent No. 4 was made as party respondent No. 10 assuming that he belong to ST(H) of Meghalaya. The Respondent No. 4 has filed affidavit in opposition in the said W.P.(C) No. 4946/04 on 16.8.2004 and claims that she is a permanent resident of Rongtheang, Diphu in the district of Karbi Anglong and belong to Garo Tribe.

10. That after receipt of aforesaid affidavit in opposition filed by the private Respondent in W.P.(C) No. 4946/04, the Petitioner properly inquired about the private Respondent"s status. Then the Petitioner came to know that the private Respondent is not a permanent resident of Rongtheang, Diphu in the district of Karbi Anglong. The village head of Rongtheang village after perusal of the records certified that there is no such person by name Dr. Chandra Barua in the said locality who is the father of the Respondent No. 4. Further the Petitioner himself gone through the voter list of the village Rongtheang where the

Petitioner have shown a permanent resident but the Petitioner did not find the Respondents' name and her father's name in the said voter list which was upto date voter list and the last parliamentary election was held on basis of the voter list.

11. That the Petitioner begs to state that the private-Respondent in the aforesaid affidavit in opposition annexed his Caste Certificate No. 1070, dated 13.11.2000 and Permanent Residential Certificate No. 102, dated 01.08.03 to prove her caste as well as her residence. After personal verification made by the Petitioner, it is found that the Respondent No. 3 without inquiring and proper verification about the status of the private Respondents as well as her parents" have issued the Caste Certificate and Permanent Residential Certificate.

12. That the Petitioner begs to state that infact the private Respondent is permanently residing at Nij-Kadamoni, post office Bairagirath under police outpost Gavarupathar (Police Station Dibrugarh) in the district of Dibrugarh for several years. In no point of time the private Respondent or his parents were permanently resided in village Rongtheang under police station Diphu in the district of Karbi Anglong.

13. That the Petitioner begs to state that Caste certificate have been issued by the Respondent Deputy Commissioner without verifying the facts of the private Respondent. It is a privileged norms and procedure that while a person asks the authority concerned to issue a Caste certificate, the Petitioner have to state that he is a permanent resident of that locality and he has landed property in that area. Further, before issuing the Caste certificate and PRC, the Respondent authority has to inquire through the Revenue Officer of that circle regarding his/her landed property and resident. And in the case of PRC the clearance from the police is also required. Whereas, in the instant case it is not followed.

14. That the Petitioner begs to state that the Garo community is recognized as ST(H) in the district of Karbi Anglong. The surname of the private Respondent is Sangma and her father's surname is Barua. It is a general presumption that son and daughter may not follow/write the surname of the father. But when a person uses his/her surname for the purpose of again or benefit and defraud the genuine person by using the said surname is amount to criminal offence. In this case the private Respondent by using her surname as Sangma wants to deprive a genuine ST(H) candidates legal and Constitutional right of reservation by impersonation herself to be a Garo community of Karbi Anglong which is recognized as ST(H) in the hills district of Assam."

15. That in the instant case the private Respondent being the daughter of Mr. Barua uses the surname as Sangma only to take the benefit of reservation by depriving aboriginal ST(H) of Assam.

7. The official Respondents have filed a common affidavit in all the three writ petitions. A separate affidavit-in-opposition has been filed by the Respondent No. 2 in W.P.(C) No. 4946/2004. Another affidavit has been filed by the Respondent

No. 1 in W.P.(C) No. 4946/2004 to which the Petitioner has filed his affidavit-in-reply.

8. Writ Petition (C) No. 5413/2004 has been filed by the Respondent No. 10 in W.P.(C) No. 4946/2004 praying for a direction for her admission as ST(H) candidate against the quota earmarked. An affidavit-in-opposition has been filed by the Respondent No. 2.

9. As against the claim of the Petitioner, in W.P.(C) No. 4946/2004 and W.P.(C) No. 6128/2004, it is the stand of the Respondent Nos. 8 and 10 that both of them having been included in the select list on their own merit, they are entitled to get the benefit of reservation as ST(H) candidates. The Respondent No. 8 claims that she is entitled to the benefit of the proviso to Rule 3(2). Her case is that although she belongs to Meghalaya, her father being an I.P.S. Officer belonging to the All India Service and having been allocated to the Assam Meghalaya Joint Cadre of the Service, She is fully eligible for admission into MBBS course. On the other hand it is the claim of the Respondent No. 10 that although her father is a non-tribal, but he having married a Garo belonging to Matriarchal Society, and she having adopted the custom and culture of her mother, she belongs to ST(H) of Karbi Anglong District from which her mother hails. She has placed reliance of Annexure-I and Annexure-H certificates dated 13.11.2000 and 1.8.2003 respectively certifying her as ST being an ordinary resident of Karbi Anglong District and permanent resident of the said district respectively.

10. The official-Respondents in their affidavit have stated that there are 16 seats in ST(H) category for admission into MBBS and BDS Courses and that 15 seats have already been filled up leaving only one seat vacant. As regards the case of the Respondent No. 10, it is the stand of the official Respondents that her case has been forwarded to the concerned authority for verification of her Caste Certificate and the report is still awaited. Such a stand has also been taken in the affidavit filed by the Respondent No. 2 in W.P.(C) No. 5413/2004. As regards the Respondent No. 8 it is the stand of the Respondent No. 8 in W.P.(C) No. 4946/2004 that her case is fully covered by proviso to Rule 3(2). She has stated that her father belongs to I.P.S. of the Assam-Meghalaya Joint Cadre and presently posted as DIG, Eastern Range, Meghalaya, Shillong. Her case is that she belongs to Jaintia Tribes which is recognized as ST(H) in the State of Assam.

11. In the common affidavit filed by the Respondent No. 1, it has been stated that the case of the Respondent No. 10 has been referred to the Government for a decision. It has also been stated that reports etc. of the Deputy Commissioner, Dibrugarh and the Deputy Commissioner, Diphu have been received on 17.8.2004 respectively. Referring to the letter No. 39/37/73 SC dated 21.5.77 issued by the Ministry of Home Affairs on the subject of Caste status of the offspring of inter-caste married couple, it has been stated in the affidavit that the main factor for consideration is whether the couple was accepted by the Tribal Society. According to the said affidavit, the Respondent No. 10 never lived at

Diphu in the midst of the Tribal society and the society did not get scope either to accept or to reject her as one of the members of the Tribal Society and thus she cannot be considered to belong to ST(H) community, although she has retained the surname of her mother and thus her claim for admission into the Medical Colleges in Assam as a reserved category candidate belonging to ST(H) is not valid.

12. In the individual affidavit filed by the Respondent No. 1 in W.P.(C) No. 4946/2004 the claim of the Respondent No. 8 has virtually been accepted on the basis of the proviso to the aforesaid Rule 3(2). It has further been stated that the case of the Respondent No. 8 was considered as a ST(H) candidate. However, her admission has been with-held as the Selection Board could not decide as to her Caste status and that the Director of Medical Education who is the Chairman of the Selection Board has referred the matter to the Government for a decision. Further stand in the affidavit is that the Respondent No. 8 belongs to Jaintia Tribes which is a Hills Tribe of Meghalaya and that she is a permanent resident of Meghalaya. According to the affidavit, the Jaintia Tribe is also a recognized as Hills Tribe in the Autonomous Hills District of Assam.

13. I have heard Mr. M. Sarania, learned Counsel for the Petitioner in W.P.(C) No. 4946/2004 and WP(C) No. 6128/2004. I have also heard Mr. G.N. Sahewalla, learned senior Counsel for the Respondent No. 8 who is also the writ Petitioner in W.P.(C) No. 5413/2004. Mr. S.S. Dey, learned Counsel appearing for the Respondent No. 10 made submissions on her behalf. Mr. P.K. Mushahary, learned senior Government Advocate made submissions on behalf of the official Respondents.

14. On the basis of the submissions made by the learned Counsel for the parties and the materials available on records, the only issue to be decided is as to whether the Respondent Nos. 8 and 10 can claim the benefit of reservation against the category of ST(H). This issue concerning the Respondent No. 8 depends on the interpretation of Rule 3(2) of the aforesaid Rules in reference to the factual matrix of the status of her father as an All India Service Officer belonging to I.P.S. So far as the Respondent No. 10 is concerned, the issue will have to be resolved in reference to her claim that she inherited her status as ST(H) from her mother and her living with the Society to which her mother belongs.

15. Before I proceed to answer the issue, I deal with the preliminary objections raised by the learned Counsel for the Respondent Nos. 8 and 10 which is regarding maintainability of the writ petitions being W.P.(C) No. 4946/2004 and W.P.(C) No. 6128/2004. It is the stand of the learned Counsel for the Respondent Nos. 8 and 10 that the Petitioner having not been included in the select list, there is no subsisting enforceable legal right of the Petitioner and thus any decision in the writ petitions would be only academic. The contended that to make the writ petition maintainable, the Petitioner would have to establish his case first before pointing out any irregularity or illegality in respect of Ors. . To counter such

submissions, the learned Counsel for the Petitioner submitted that in the event of exclusion of the names of the said Respondents, his name would be included in the list and that his name having been excluded from the list by way of wrongful inclusion of the names of the private-Respondents, it was within his right and legal competence to make challenge to the very selection of the said two Respondents.

16. I find sufficient force in the submissions of the learned Counsel for the Petitioner and hold that the objections raised on behalf of the said two Respondents is not sustainable. Leaving aside the right of the Petitioner to get his name included in the select list with the exclusion of the name of the Respondent Nos. 8 and 10, the very eligibility of the said two Respondents to sit in the CEE having been questioned in the writ petitions, the writ court in exercise of its power of judicial review under Article 226 of the Constitution of India cannot be oblivious of the challenge made and remains a silent spectator allowing such a technical plea.

17. Rule 3 of the Rules of 1996 lays down condition and eligibility for appearing in CEE pertaining to admission in M.B.B.S. Course in any of the Medical Colleges or the B.D.S. Course in the Regional Dental College, Guwahati. No candidate is eligible for appearing in the Examination unless he is a citizen of India and is a permanent resident of Assam. However, the proviso to Rule 3(2) makes an exception as per which the sons and daughters of the employees of the Government posted outside Assam including the Officers of All India Services allotted to Assam. Such an exception has been made for obvious reasons. A citizen of India who is also a permanent resident of Assam and is a Government employee may be required to be posted outside the State of Assam. Can the sons and daughters of such employees of the Government be deprived to sit in the CEE on the ground of being not a permanent resident of Assam? Certainly the answer will be "No". The sons and daughters of Govt. employees, working outside the State, in the exigencies of service and who are otherwise permanent residents of Assam, cannot be deprived from appearing in the CEE.

18. In the instant case are concerned with such right of the sons and daughters of the officers of All India Services allotted to Assam. The father of the respondent No.8 is an IPS Officer belonging to All India Service. Although he belongs to Assam-Meghalaya Joint Cadre, but he has been allocated to the Meghalaya wing of the said Joint Cadre. In fact he belongs to Meghalaya and the possibility of the having opted for Meghalaya wing of the Joint Cadre cannot be ruled out. In any case, he having been allotted to the Meghalaya wing of the Joint Cadre can it be said that he falls in the category of Officers of All India Services allotted to Assam? In this connection the proviso to Rule 3(2) itself makes the position clear. The stress is on the Officers of All India Services allotted to Assam .

(emphasize added)

19. Nothing could be brought on record that the father of the respondent Nos.8 has been allotted to Assam. It is true that he has been allotted to Assam Meghalaya Joint Cadre. But he has been posted to Meghalaya wing of the Joint Cadre. In such circumstances, I am of the considered opinion that the true meaning, purport and object of the proviso to Rule 3(2) of the aforesaid Rules of 1996 will not take into its fold Officers of All India Services posted to Meghalaya wing of the Assam Meghalaya Joint cadre, more particularly when the said Officer belongs to Meghalaya itself. If the respondent No.8 is allowed the benefit of the said proviso to Rule 3(2), the true purport and import of the provision, in my considered opinion will be frustrated. Thus the claim of the respondent No.8 to get herself admitted to the first year MBBS Courses of 2004-2005 in the Medical Colleges of Assam or the BDS Courses in the Regional Dental College as a candidate who is a citizen of India and a permanent resident of Assam is not sustainable and her case does not come within the exception as provided in the proviso to the Rule 3(2) of the Rules.

20. This leads us to the eligibility of the respondent No. 10 as ST(H) candidate of Assam. The official-respondents have taken the stand that her plea of being ST(H) candidate is not acceptable. The respondent No. 10 in support of her claim has annexed Annexure-I and II Certificates which are of 13.11.2000 and 1.8.2003 respectively. As per the affidavit sworn in by her, her age as on 2nd August, 2004 was about 19 years. On that basis she was born in an around 1985. If her claim that she belongs to ST(H) community of Karbi Anglong District of Assam, she having accepted the Caste and status of her mother who was an ordinary resident of Karbi Anglong District is to be accepted, then the question necessarily arises, as to why the said certificates were obtained after 15 years and 18 years of her birth. This is precisely the reason as to why upon an enquiry made, the Deputy Commissioner, Diphu by his WT Message dated 30.8.2004 certified that the father of the petitioner has been serving outside the District of Karbi Anglong since 1972 and that the petitioner has been living with her father outside the District ever since her birth. It is in this context, the official respondents have referred to the clarification issued by the Ministry of Home Affairs in its letter dated 21.5.77 which has been referred to above. In the said letter the decision of the then Assam High Court in Abdul Hamid and Others Vs. The State of Tripura, has been referred to. The relevant observations in the said letter are reproduced below:-

In the case of marriage between a tribal with a non-tribal the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she as the case may be, is accepted by the Society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, circumstances may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe men. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their

own community. This view has been held by the Assam High Court in Wilson Road V.C. Booth reported in AIR 1958 Gau128 where it has been held.

The test which will determine the membership of the individual will not be the purity of blood, but its own conduct in following the customs and the way of life of the tribe; may which he has been treated by the Community and the practice amongst the tribal people in the matter of dealing with persons whose mother was Khasi and father was a European.

21. Mr. M. Sarania, learned counsel for the petitioner during the course of his argument also produced documents, one dated 4.7.2001 and the other one dated 27.8.2004. The document dated 4.7/2001 is the birth report of the petitioner. It was only on 4.7.2001, the date birth of the petitioner as 21-10-84 was registered in the District of Karbi Anglong at Diphu. By the other document, a letter 27.8.2004 issued by the Assistant Revenue Officer, Diphu Circle, Karbi Anglong Autonomous Council, Diphu and addressed to the Principal Secretary of the said Council it was reported that the father of the petitioner is non ST(H) and that he does not have any land in the District of Karbi Anglong and thus the petitioner had no right to obtain PRC and Caste Certificate from the authority of the Autonomous District. The letter was issued on the basis of the information sought for by the Additional Deputy Commissioner. The letter further reveals that it was only on 26.7.2004 some portion of land belonging to the sister of the Petitioner's mother was gifted to the mother of the Petitioner.

22. Mr. Sahewalla, learned senior Counsel for the Respondent No. 10 submitted that the Petitioner having adopted the title of her mother and she having accepted the custom and practice being prevalent in her mother's community, she belongs to ST(H) community. In support of such a claim he placed reliance on the decision of the Apex Court as reported in N.E. Horo Vs. Smt. Jahanara Jaipal Singh, in which the Apex Court dealing with an Election Petition held that even if a female is not a member of a tribe by virtue of birth she having been married to a tribal after due observance of all formalities and after obtaining the approval of the elders of the tribe belonged to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile.

23. Can the instant case said to be the one as envisaged in the aforesaid case. The Respondent No. 10 could not bring anything on record to show that she was born and brought up in the society of her mother and that she has been accepted as one of the members of the society to which her mother belonged. Rather it is on record that she has been living with her father all throughout ever since her birth and that she never lived in the district of Karbi Anglong. In this connection Rule 3 of the Assam SC and ST (Reservation of Vacancies in Services and Posts) Rules 1983 may be referred to. As per Rule 3(2) of the said rules the offspring of a couple where one of the spouses belong to Scheduled Caste does not automatically belong to Scheduled Caste excepting that the offspring is brought up in the social customs and environment of the Scheduled Caste community and has been accepted as such by the community. It further requires that where the

surname of the person is not same as one usually used by the SC community, verification of surname of the ancestors will be necessary. The Petitioner has not been able to bring anything on record satisfying the test as envisaged under Rule 3 of the said rules.

24. Had it been the case of assimilation of the Petitioner accepting the society and custom of her mother, she would not have awaited to register her name with the office of the Registrar of Birth for 17 long years so as to register her name on 4.7.2001. She would not have awaited for long 16 years and 19 years respectively for issuance of the caste and permanent residentship certificates.

25. Although Mr. Sahewalla, learned Senior Counsel appearing for the Respondent No. 10 in reference to certain documents in the proceeding submitted that there is no dispute that the Petitioner has been recognized to be a permanent resident of Karbi Anglong District but the said documents do not inspire the confidence of this Court in respect of the issue which has been raised in this proceeding. No amount of certificate issued to meet the allegations made by the Petitioners and that too issued only in and around the time of CEE can over-ride the real state of affairs with the Petitioners. The own case of the Petitioner as has been made out in her writ petition leads to the irresistible conclusion that she obtained the Annexure-I and II certificates after long 16 years and 19 years after birth only with the purpose of getting undue favour as ST(H) candidate to the deprivation of the real ST(H) candidates.

26. As per note appended to the Caste Certificate issued in favour of the Respondent No. 10, the term "Ordinarily resides" used in the certificate will have the same meaning as in Section 20 of the Representation of the People Act, 1950. Section 20 of the said Act specifically states that a person shall not be deemed to be ordinarily resident in a Constituency on the ground only that he owns or is in possession of, a dwelling house therein. In this connection Mr. Sarania, learned Counsel for the Petitioner placed reliance on the decision of the Apex Court as reported in Director of Tribal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, ; Mrs. Valsamma Paul Vs. Cochin University and others, and Union of India and Others Vs. Dudh Nath Prasad,

27. In the case of Laveti Giri (Supra) the Apex Court uphold the decision of the Director, Tribal Welfare that the Respondent in that case belonged to non-ST Caste and reversed the view taken by the High Court holding that the High Court erred in reversing the view taken by the Director. The Apex Court observed that the Respondent played fraud on the Constitution. The Apex Court laid emphasis in reference to its earlier decision in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development as reported in (1994) 6 SCC 24 as to how the matter was required to be dealt with.

28. In the case of Valsamma Paul (supra), the Apex Court held that be it either under the Cannon law or the Hindu law, on marriage the wife becomes an integral part of her husband's marital home entitled to equal status of husband

as a member of the family. It further observed that the lady, on marriage, becomes a member of the family and thereby she become a member of the caste to which she moved. It went on to observe that the caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted. In paragraph 33 and 34 of the judgment, the Apex Court observed as follows:

33. However, the question is: Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognized by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities.

34. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde and R. Chandevappa v. State of Karnataka* this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Article 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Article 15(4) and 46, or in appointment to an office or post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs. He/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the constitution.

29. In the case of *Dudhnath Prasad* (Supra), the Apex Court had the occasion to deal with the issue relating to "ordinarily resident" appearing in Section 120 of the Representation of the People Act, 1950. It observed that a person, before he can be said to be "ordinarily residing" at a particular place has to have an intention to stay at that place for a considerably long time. It would not include a flying visit or a short or casual presence at that place.

30. In the instant case nothing could be shown by the Respondent No. 10 that

she comes within the aforesaid definition "ordinarily resident". The very fact that she had applied for her birth registration at Diphu in the District of Karbi Anglong only in the year 2001, which is about 17 years of her birth and that she obtained the Caste Certificate and the PRC after 17 years and 19 years respectively after birth from the authority of the Karbi Anglong District where she claims to be the "ordinarily resident", will go to show how abortive the claim of the Petitioner is. This is precisely the reason why the Deputy Commissioner, Diphu in his report dated 30.8.2004 has indicated that the Petitioner has been living with her father outside the District of Karbi Anglong ever since her birth and that her father has been serving outside the District since 1972. In such a situation, merely because the Petitioner followed the title of her mother, she cannot claim to be a member of the ST(H) community.

31. For the foregoing reasons and discussions the Respondent No. 8 and 10 cannot get the benefit of reservation as ST(H) candidates and their selection on that basis under category ST(H) is not sustainable. While the Respondent No. 8 does not come within the purview of the proviso to Rule 3(2) of the 1996 Rules, the Respondent No. 10 being a member of the advanced society cannot claim the benefit of reservation as ST(H) candidate without fulfilling the conditions precedent for the same.

32. Writ Petitions being W.P(C) No. 4946/2004 and W.P.(C) No. 6128/2004 succeed and the writ petition being W.P.(C) No. 5413/ 2004 stands dismissed. After deletion of the names of the Respondent Nos. 8 and 10 from the list in question, if the Petitioner comes within the zone of consideration on the basis of the marks obtained by him in the CEE, the official Respondents shall do the needful towards inclusion of his name in the list and shall consider his case on that basis for admission into the aforesaid course of studies, strictly on the basis of merit positions amongst the S.T.(H) candidates.

33. The aforesaid two writ petitions stand allowed while the case filed by the Respondent No. 10 stands dismissed leaving the parties to bear their own costs.