

(2010) 01 GUJ CK 0010

In the Gujarat High Court

Case No : Letters Patent Appeal No. 392 of 2008 with Civil Application No. 4750 of 2008 in Special Civil Application No. 23125 of 2007

Rameshbhai Dabhai Naika

APPELLANT

Vs

State of Gujarat and others

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Constitution of India, 1950 — Article 15(4), 16(4), 226

Citation : (2010) 1 GLH 736

Hon'ble Judges : S.J. Mukhopadhaya, J; Anant S. Dave, J

Bench : Division Bench

Advocate : H.R. Prajapati, for the Appellant; Trusha Patel, AGP, for respondent Nos. 1 to 5 and Mr. Vikram J. Thakor, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Chief Justice Mr. S.J. Mukhopadhaya

1. Admittedly, the appellant is the offshoot of the wedlock of a tribal woman married to a non-tribal husband i.e. forward caste [kshatriya]. The appellant, on the ground that he had undergone handicaps and subjected to disabilities, disadvantages, indignities or sufferings like a scheduled caste or scheduled tribe, obtained a caste certificate of scheduled tribe and was granted a licence for fair-price shop. Later on, having noticed that the appellant was born of a forward caste [kshatriya] father, the caste certificate was cancelled by the Authorities, which was confirmed by the learned Single Judge.

2. Learned counsel for the appellant has relied upon the Supreme Court decision in Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Another, , Supreme Court decision in R. Chandevappa and Others Vs. State of Karnataka and Others, , and as noticed in the subsequent judgments, wherein, the Supreme Court observed that, 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. It was submitted that the appellant having undergone the same handicaps and other disadvantages, the Authorities ought to have noticed the relevant evidence to come to a definite finding that the appellant, who was born and brought up in a tribal society because his father was ex-communicated from his society and was taken into the fold of the tribal community, is eligible to the benefit of reservation.

3. The learned counsel for the respondents referred to other decisions of the Supreme Court and submitted that a person cannot claim inheritance of scheduled caste from his mother merely on the basis of an administrative instruction issued by the Government.

4. We have heard learned counsel for both the parties and perused the record.

5. It is settled law that 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 either under Article 15(4) or 16(4) of the Constitution of India. In this context, we may refer to the Supreme Court decision in *Mrs. Valsamma Paul Vs. Cochin University and others*, .

6. In the case of *Punit Rai Vs. Dinesh Chaudhary*, , similar question arose for consideration. In the said case, the Court observed that, the caste system in India is ingrained in the Indian mind. A person, in the absence of any statutory law, would inherit his caste from his father and not his mother even in a case of intercaste marriage.

7. In the case of *Anjan Kumar Vs. Union of India (UOI) and Others*, , the Court noticed that the offshoots of the wedlock of a tribal woman married to a non-tribal husband-Forward Class [Kayastha in the present case] cannot claim Scheduled Tribe status. The reason being that such offshoot was brought up in the atmosphere of Forward Class and he is not subjected to any disability.

8. The learned counsel for the appellant has referred to the evidence and submitted that the appellant had also undergone the same handicaps, and subjected to the same disabilities, disadvantages, indignities and sufferings like a scheduled tribe, having brought up in the family of the mother. But, apart from the fact that this Court under Article 226 of the Constitution cannot give a finding on the basis of such evidence to suggest that the appellant had undergone similar disabilities and disadvantages, the fact being that the appellant was born of a forward caste [kshatriya] father and, under the Hindu law, inherited his caste from his father and not his mother who was a scheduled tribe and, thereby, the appellant had not undergone the indignities which a schedule caste or scheduled tribe suffers. We find no ground made out to interfere with the impugned order passed by the learned Single Judge or the order passed by the Authorities.

9. In the absence of any merit, the appeal is dismissed. The interim relief stands vacated. There shall be no order as costs. Civil Application stands disposed of.