
(2011) 09 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16829 of 2011

Roshan Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 16(4), 341, 341(1), 342, 342(1)

Citation : (2011) 164 PLR 309 : (2012) 3 RCR(Civil) 453

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition is fall out of the dispute between the petitioner and the 5th respondent. When the auction held in reserve bidding for persons belonging to the Scheduled Caste community, was allotted in favour of the 5th respondent, it came to be however annulled by what the 5th respondent perceived to be on account of petitioner's actions and complaints. The 5th respondent turned the table on the petitioner by stating that he was not a Scheduled Caste Harijan and he was not entitled in the first place to participate in the restrictive auction. On the basis of this complaint, the SC Certificate, which was granted to the petitioner was sought to be reappraised and the Deputy Commissioner, Fatehabad is reported to have directed the Additional Deputy Commissioner for enquiry and after such enquiry, Additional Deputy Commissioner had submitted a report dated 28.06.2010 finding that the SC Certificate issued to him was not appropriate. The 3rd respondent appears to have been not satisfied by the report of the Additional Deputy Commissioner and remitted the matter again to take a report from the District Magistrate at Bihar since the allegation was that the petitioner was not domiciled in Haryana and the issuance of certificate here was not appropriate. His place of birth was said to be Bihar and he was directed that the report must be secured from the District Magistrate in the jurisdiction of district of his place of birth from Bihar. The

grievance of the petitioner was that the 4th respondent without taking such report from the District Magistrate passed the impugned order dated 16.08.2011 that the SC Certificate already issued in favour of the petitioner in the year 1993 was illegal and has ordered that all the benefits that he had got on the basis of that certificate to be recovered from him. It appears that 4th respondent has also directed criminal action to be initiated against the petitioner.

2. The issue in this case is whether there was justification in the impugned order for the 4th respondent to cancel his certificate that had been issued in the year 1993 by the Tehsildar in Haryana. The issue would revolve on the constitutional status of a person, who is declared to be a member of the Scheduled Caste. Article 341 of the Constitution of India empowers the President to issue by public notification, after consultation with the Governor specifying castes, races or tribes to the Scheduled Caste in relation to that State or Union Territory. The opening words in Article 341 of the Constitution of India are important: "The President may with respect to any State or Union Territory or where it is a State, after consultation with the Governor, by public notification....." The Scheduled Caste status is always with reference to the particular State. No modification of the notification is possible except in the manner provided in sub clause (1) of Article 341 that empowers the Parliament to include or exclude from the list of Scheduled Castes specified in the notification any caste, race or tribe and it is peremptory in character in that the latter part of the Article states "but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification." The status of a person belonging to a Scheduled Caste, which is notified in the State, who migrates from that State to yet another, has come through two important decisions of the Hon'ble Supreme Court through Constitutional Benches. The leading case was in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, . The case related to a candidate, who was a Scheduled Caste born in Andhra Pradesh and who took admission after taking a certificate from Maharashtra in a medical college in Maharashtra. The Hon'ble Supreme Court held "Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given preference so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community, who suffered from those disabilities in those areas." This judgment has been focal to several other subsequent decisions as well. In Action Committee on issue of Caste Certificate to SCs/STs 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, , another Constitutional Bench, which affirmed the decision in Marri Chandra Shekhar Rao's case held "considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/ Scheduled Tribes or Backward Classes in a given State depend on nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons

belonging thereto may migrate. Coincidentally, it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former could be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State for the purposes of this Constitution." This is an aspect which has to be kept in mind and it was very much in the minds of the Constitution makers as is evidenced from the choice of language of Article 341 and 342 of the Constitution.

3. Two judgments have actually gone out of sync with the Constitutional Bench decisions. One was *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, and *Chandigarh Administration and Another Vs. Surinder Kumar and Others*, . These two decisions were in the context of claiming benefits as a Scheduled Caste in Union Territory by relying on the Central Government directive to apply the Scheduled Caste status to a person of any State also to apply to the Union Territories. The decision in *Pushpa* was held to be per incuriam and stated to be a bad law in *Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others*, . *Subhash Chandra* held that *Marri Chandra Shekhar Rao* had been followed by the Supreme court in a large number of decisions including 3 Judge Bench decisions and hence, *Pushpa* could not have ignored either *Marri Chandra* or other decisions following the same. The Bench held that the dicta in *Pushpa* was obiter and does not lay down any binding ratio. Having regard to the importance of the question and for a still more authoritative pronouncement on the subject, there is a recent judgment of the Hon"ble Supreme Court in *State of Uttaranchal Vs. Sandeep Kumar Singh and Others*, when the Bench raised the question of the nature of interplay and interaction between Articles 16(4) and Article 341(1) and 342(1) of the Constitution and it observed that the dispute was required to be resolved in the context of the power of the President to issue an order under Article 341(1) or 342(1) on the State's action in making provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State was not adequately represented in the services under the State. This decision is merely referred for completion of discussion on the subject but not immediately relevant to us for we are not considering the issue of appointment under Article 16(4).

4. One proposition that stands authoritatively laid down is that a Scheduled Caste migrant does not obtain such status in the State to which he has migrated by the only fact that the very same nomenclature of caste is also notified as Scheduled Caste in the place of his birth. In this case, the admitted point is that the petitioner had migrated from Bihar to Haryana when he was 15 years of age. He has also admitted that his parents did not have any Scheduled Caste Certificate. In such a context the order passed by the 4th respondent annulling a certificate issued already by an officer in Haryana was perfectly justified. The

proper remedy for the petitioner would be to only apply and secure a Scheduled Caste Certificate from the place of his birth. Any precipitate action by the State for withdrawing the benefits already obtained by the petitioner on the basis that he was a Scheduled Caste or any possible criminal action will give rise to the petitioner an independent cause of action which he will be at liberty to urge taking the issue of bona fides that he had no criminal intent or any other mitigating circumstances that would come to his aid. As of now, the order cancelling the Schedule Caste Certificate could be seen to have a strong constitutional basis and I find no reason to interfere with the same.

5. The writ petition is, therefore, dismissed in limine.