
(2014) 02 GAU CK 0002
In the Gauhati High Court
Case No : W.P. (C) No. 3235 of 2004

Shri Samudra Baishya

APPELLANT

Vs

The State of Assam and Shri Panchal Kumar Das

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 02 GAU CK 0002

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : N. Deka, Advocate for the Appellant; S.U. Ahmed, G.A., Assam, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—Heard Mr. N. Deka, learned counsel for the petitioner. Also heard Mr. S.U. Ahmed, learned State Counsel. None has appeared for the respondent No. 4.

2. The petitioner is aggrieved by the report dated 11/11/20103 submitted by the Additional Deputy Commissioner, Kamrup (M), Guwahati, by which it has been recorded that the petitioner could not establish that he belongs to the recognized sub-caste of Schedule Caste Community. As per the said report he belongs to "Sonari Sub-caste" which is not a recognized sub-caste of Schedule Caste.

3. There is no dispute that as per the Annexure-1 certificate dated 05/11/1976, the petitioner belongs to "Bania" community, which is recognized as Schedule Caste under SC/ST (Amended List) Order, 1956. When the Annexure-1 certificate recognizing the petitioner as belonging to SC community was holding the field and he got employment as SC category candidate, the respondent No. 4 filed a writ petition being C.R. No. 5291/1997 challenging the S.C. status of the petitioner. In the writ petition, it was asserted that the petitioner does not belong to S.C. community and thus could not have obtained employment on the basis of the caste certificate issued to him. It so happened that when the petitioner was

appointed as Junior Scientific Officer in the Assam Forensic Science Laboratory, he occupied merit position No. 1 of the selection as against the merit position No. 2 obtained by the respondent No. 4.

4. The writ petition was disposed of directing the Deputy Commissioner, Kamrup to dispose of the particular enquiry that was initiated against the petitioner. It is pursuant to the said direction the enquiry report dated 11/11/2003 impugned in this writ petition was submitted to the Deputy Commissioner, Kamrup (M), challenging which the writ petition was filed.

5. When the writ petition was filed, the petitioner was about 45 years of age and had earned further promotion to the post of Sr. Scientific Officer. It is submitted by Mr. N. Deka, learned counsel for the petitioner that the present age of the petitioner is 56 years and thus is about 4 years away from the date of retirement on attaining the age of superannuation.

6. It is on record that the respondent No. 4 had also filed a writ petition being W.P. (C) No. 3257/2004 seeking enforcement of the impugned enquiry report. However, the same has been withdrawn on 03/01/2013. In the enquiry report, the following finding has been recorded on the basis of the analysis of the documents and statements:-

Analysis of above mentioned documents and statements:-

1. There is three reports from the Circle Officer, Hajo different dated - where in two reports dtd. 14/2/97 and dtd. 30/7/03. The Circle Officer, Hajo reported favourably - But in the report dtd. 16/4/97 Circle Officer, Hajo sent a self - contradictory report. Where he clarified that Sri Samudra Baishya does not belong to schedule Caste community.

2. Both petitioner and the respondent were firm and clear in their respective statements. Still I found respondent Sri Samudra Bishya was somehow shaky and not enough bold to establish his status. Neither he did add new evidence nor he demanded to examine more witnesses on his behalf. On enquiry regarding his land document - he stated that they are having Debottar Land - no landed properties are in their family?s name.

3. Secretary, All Assam Anusuchit Jati Employees Association and Assam Anusuchit Jati Association reiterated what they said in earlier enquiries. They stated that Sri Samudra Baishya does not belong to Schedule Caste.

4. The turning point of this enquiry are the two statements one from Sri Ratneswar Baishya and the other of Sri Kalpa Baishya - the former is the paternal uncle and the later is the paternal cousin of Sri Samudra Baishya.

Being nearly 70(seventy) years, staying at the ancestral house Sri Ratneswar Baishya stated that they belong to "Sonari" sub-caste and he does not know whether they belong to Schedule Caste or not. Self recorded the statement at his home situated at Bathan, Sualkuchi (exhibit No. 3).

Shri Kalpa Baishya identified the application forms to take admission in a local college and he also admitted that inadvertently he did the tick mark at Sl. No. 07, where it was asked "Whether he belongs to Schedule Caste or not" Yes/No, he ticked mark "No", same mistake (?) was done by his sister Smt. Manju Baishya also. How come a member of Schedule Caste Community can commit this kind of mistake? Moreover both of them passed the HSLC exam in 3rd Divn. To take admission in a college a Schedule Caste Certificate would have been very very helpful to them.

5. The sub-caste of Sri Samudra Baishya could have been established had he been had his old land documents of this grandfather (exhibit No. 4). But on enquiry he gave a written statement that the land where his ancestral house is situated is actually a Debottar property - their family member do not posses any land documents.

Conclusion:-

From the above stated analysis, I have come to a conclusion that there are not enough documentary evidence in favour of Sri Samudra Baishya where he could establish that he belongs to Sub-Caste which is a recognised sub-caste of Schedule Caste Community. According to his uncle, they belong to "Sonari" sub-caste which is not a recognised sub-caste of Schedule Caste.

7. While Mr. N. Deka, learned counsel for the petitioner submits that the report is based on conjectures and surmises, Mr. S.U. Ahmed, learned State Counsel submits that the matter is now require to be gone into by the Deputy Commissioner, no interference is called for in respect of the said report. On the other hand, Mr. N. Deka, learned counsel for the petitioner submits that in the given facts and circumstances and when the report itself is perverse and based on no evidence, the matter is required to be closed.

8. As noted above, the petitioner was issued with the SC certificate way back in 1976 and to be precise on 05/11/1976 and the same was counter signed by the Additional Deputy Commissioner, Kamrup. The petitioner has also referred to the SC certificate issued to his brother Shri Indradhar Baishya. He has also referred to 2 (two) other certificates belonging to his cousin brothers namely Uttam Baishya and Kalpa Baishya. The petitioner has also referred to the certificate dated 06/02/1998 issued by the Principal of the College in which his brother and sister, namely, Kalpa and Manju had studied. By the said certificate, the Principal of the College had certified that the said brother and sister of the petitioner received SC scholarship on the basis of the caste certificates submitted by them. In the certificate, the sanction order and cheque No. showing payment of scholarship has also been indicated.

9. In the additional affidavit filed by the petitioner, the application forms seeking admission of his aforesaid brother and sister have also been brought on record. In the said two applications submitted on 29/07/1992 and 20/07/1991 respectively, under the relevant column it was indicated that they belong to SC

community. Placing reliance on the aforesaid documents, it is the case of the petitioner that he belongs to SC community and the said fact could not have been negated by the enquiry report impugned in this proceeding.

10. On perusal of the report it is found that the findings recorded therein on the basis of the fact that out of 3 (three) reports submitted by the jurisdictional Circle Officer, two reports are in favour of the petitioner while the third one is against him. As per the said analysis, the petitioner was somehow shaky during the course of evidence and that he did not pray for examining more witnesses. It has also been recorded that he could not produce any land document showing ownership of land and that the land under his occupation is only debottar land.

11. In the enquiry report the authority has also referred to the application forms submitted by the brother of the petitioner Shri Kalpa Baishya. According to the findings recorded in the report, in the particular column Kalpa did not indicate that he belongs to SC community. However, on perusal of the copy of the application form annexed to the affidavit, it is clearly established that Shri Kalpa Baishya identified himself as belonging to SC community. The petitioner has also placed reliance on another document, which is a certificate issued by the Guwahati District Schedule Caste Parishad certifying that there is no caste called "Sonari" in Assam. This certificate has been produced to show that the findings recorded in the enquiry report that the petitioner belongs to "Sonari" Community is perverse.

12. From the above reading of the facts it will be totally unsafe to return the finding that the petitioner does not belong to SC community. Further, as on today, there is also no challenge to the caste certificate of the petitioner referred to above.

13. In view of the above while interfering with the enquiry report dated 11/11/2003 (Annexure-10) of the Additional Deputy Commissioner, Kamrup (M), Guwahati, it is kept open to the authorities or any other aggrieved party to agitate the grievance, if any, against the caste certificate of the petitioner before the appropriate authority with proven and specific facts. However, it is made clear that no adverse order shall be passed against the petitioner without affording him an opportunity of being heard.

14. With the above direction and observation, the writ petition stands disposed of, without however, any order as to costs.