
(2013) 07 MP CK 0106
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1899 of 2011

Smt. Shivkali Adiwasi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0106

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : B.S. Dhakad, for the Appellant; A.S. Rathore, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Heard. This petition has been filed against the order dt. 14-03-2011 (Annexure P-1) passed by the Additional Commissioner, Gwalior Division, Gwalior.

2. The appellant contested the election of Sarpanch, Gram Panchayat Sihnavas, District Shivpuri (M.P.). The post was reserved for the Scheduled Tribes (Woman) candidate. She was elected to the post of Sarpanch.

3. Respondent No. 7 made an objection before the SDO about the election of the petitioner on the ground that the petitioner was not eligible to contest the election because she does not belong to Scheduled Tribes category and consequently the SDO recommended the Collector to disqualify the petitioner from the post of Sarpanch. Consequently, the Collector passed the order. Meanwhile, an appeal was filed before the Collector against the order dt. 1.11.2010 passed by the SDO. The Collector observed that the SDO recorded the finding that the petitioner does not belong to Scheduled Tribes category on the ground that caste of her husband is Scheduled Caste and her children are also Scheduled Caste. However, the SDO did not consider the fact that before marriage the petitioner was a member of Scheduled Tribes category. Hence, the

Collector remanded the matter back to the SDO. Against the aforesaid order, respondent No. 7 preferred a revision before the Additional Commissioner. The authority said aside the order of Collector and upheld the order passed by SDO.

4. The counsel for the petitioner has submitted that the SDO has committed an error of law in holding that the petitioner belongs to Scheduled Caste category on the ground that the husband of the petitioner is Scheduled Caste and the children born from their wedlock have also mentioned themselves as Scheduled Caste. However, the petitioner was a member of Scheduled Tribes category at the time of birth and that status could not be changed.

5. The Collector in the order dated 17-1-2011 has mentioned the fact the father of the petitioner was Scheduled Tribes category. His death certificate was also filed as Annexure P-12. Family members of the petitioner including her sister were Scheduled Caste category. The SDO did not consider the fact that after marriage the status of the wife in regard to caste could not be changed.

6. Hon"ble Supreme Court in the case of Sandhya Thakur Vs. Vimla Devi Kushwah and Others, has held as under:-

2. In the light of the decision in Valsamma Paul v. Cochin University and others (supra) and our decision rendered today in Civil Appeal Nos. 4413-14 of 2003, which were heard along with this appeal, it must be held that the appellant, who by birth did not belong to a backward class or community, would not be entitled to contest a seat reserved for a backward class or community, merely on the basis of her marriage to a male of that community. Therefore, it is not possible to accept the argument that the appellant was entitled to contest a seat reserved for a backward community merely because of her marriage to a person belonging to the Namdev community or caste. We also see no reason to differ from the High Court in its view that the Circular dated 12-03-1997 was not restricted in its operation to employment and admission to an educational institution, but was also relevant and applicable in elections to local bodies. It is thus found that both the reasons given by the High Court for affirming the decision of the District Judge setting aside the election of the appellant are sustainable. In view of this we have no hesitation in confirming the decision of the High Court and in dismissing this appeal. Hence, we dismiss this appeal with costs.

7. From the aforesaid judgment of the Hon"ble Supreme Court, it is clear that after marriage the status of wife in regard to caste could not be changed. The same fact has been mentioned in the General Book Circular in regard to entitlement of the persons to receive caste certificate of Scheduled Tribes. Clause 12(2) of the General Book Circular prescribes as under:

8. Aforesaid facts have not been considered while passing the order, in which it has been held that the petitioner does not belong to the Scheduled Tribe. Hence, in my opinion, the Collector has rightly remanded the matter back to the SDO.

9. Consequently, the petition is allowed. The impugned order dt. 14.3.2011

(Annexure P/1) and dt. 22.11.2010 (Annexure P-6) are hereby quashed. The order dt. 17.1.2011 passed by the Collector (Annexure P/5) is hereby up held. No order as to costs