

(1996) 09 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 1819 of 1996

Sonali Devendrakumar Nimal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 341, 342
Representation of the People Act, 1950 — Section 20

Citation : (1997) 99 BOMLR 209

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Shah, J.—Rule Respondents waive service. By consent, file is made returnable forthwith.

2. The first question which arises for determination is whether a person belonging to a caste or a tribe specified for the purposes of the Constitution to be a Scheduled Caste or Scheduled Tribe in relation to State "A" migrates to State "B" where a caste or a tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State "B", will that person be entitled to claim the privileges and benefits admissible to persons belonging to Scheduled Tribe/Caste in State "B". The next question is whether a son or a daughter of such person born in State "B" to which the person has migrated be entitled to claim such privileges in State "B" or any other State.

3. The first question is squarely covered by the judgment of the Supreme Court in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, . In that case the Constitution Bench headed by Sabyasachi Mukharji, CJ., examined the question whether one who is recognised as a Scheduled Tribe in the State of his origin continues to have the benefits or privileges or rights in the State to which he migrates. In answering this question the Constitution Bench

was required to interpret Articles 341 and 342 of the Constitution and determine what the expression "in relation to that State" read in conjunction with "for the purposes of this Constitution" seeks to convey. After referring to the provisions of Articles 14, 15 and 16 and the decision in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, the Constitution Bench took notice of the fact the Scheduled Castes and Scheduled Tribes had to suffer social disadvantages and were denied facilities for development and growth in certain States. To grant equality in those States where they suffered and were denied facilities for development and growth certain protective preferences, facilities and benefits in the form of reservation, etc., had to be provided to them to enable them to compete on equal terms with the more advantageous and developed sections of the community. The Constitution Bench, has after referring to debates in the constituent assembly relating to these articles observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that there are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Caste and Scheduled Tribe belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

In other words, Scheduled Caste and Scheduled Tribe say of Andhra Pradesh do require necessary protection as balanced between the communities. But equally the Scheduled Caste and Scheduled Tribe say of Maharashtra in the instant case, do require protection in the State of Maharashtra which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult.

4. It was observed by the Constitutional Bench that considerations for specifying a particular caste to tribe or class for including in the list of Scheduled Castes/ Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non set 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. So also the degree of disadvantages of various element which constitute the input for specification may also 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 would 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".

5. The view expressed by the Constitution Bench in *Marri Chandra Shekhar Rao* was reaffirmed by another Constitution Bench headed by A.M. Ahmadi, J., (as he then was) in *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*, . While doing so the Supreme Court examined the validity of the circulars used by the Union of India as well as the State of Maharashtra and found them to be legal and valid.

6. The next question is whether a son or a daughter of the person belonging to the Scheduled Caste or Scheduled Tribe, who has migrated from State A to State B be entitled to the benefits and privileges admissible to Scheduled Caste and Scheduled Tribe with the same nomenclature in State B if he or she is born in State B where his/her parents have migrated from their original State. In my opinion, the law laid down by the Supreme Court in respect of persons who have migrated from his original State will squarely apply to his children even though they are born in the State to which the person has migrated. If a migrant is not entitled to claim such benefit or privilege in the State to which he has migrated, his progeny also cannot claim such benefit and privilege. As pointed out by the Supreme Court that when a person belonging to Scheduled Caste or Scheduled Tribe migrates to another State, he does not lose his caste but at the same time he has to make way for the disadvantaged and disabled of that part of the community who suffered from disabilities in those areas. The children of such migrant will not stand on a better footing merely because they are born in the State to which their parents have migrated. I have therefore no hesitation in holding that the position of the children of the migrant will not be different than their father who has migrated from his original State.

7. The view which I am taking is also supported by the directives of the Central Government in the communication addressed by the Central Government to Chief Secretaries to all States/Union Territories on 22nd March, 1977. It seems that the Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particular Scheduled Caste/Scheduled Tribe were not issued strictly in accordance with the principles governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the concerned authorities. With a view to clarifying the legal position the communication of March 22, 1977 came to be issued. The relevant part of that communication reads as follows:

As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after

consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribe in relation to that State or Union Territory from time to time. The interstate area restrictions have been deliberately imposed so that the people belonging to the specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe Status, only benefit from the facilities provided for them. Since the people belonging to the same but living in different States/Union Territories may not both be treated to belong to Scheduled Caste/Tribe or vice versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in his case, say for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that order in relation to this State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

The communication further states that with a view to ensure the veracity of permanent residence of a person and that of the caste/tribe to which he claims to belong, the Government of India made a special provision in the proforma prescribed for the issue of such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated August 6, 1975 indicated the authorities locality-wise who should issue the certificate. The communication when proceeded to add:

Thus the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another District. Nor can such an authority of one State/Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State/ Union Territory.

In regard to persons born after the date of notification of the relevant Presidential Order, the communication states that the place of residency for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe.

8. Subsequent to the issuance of the said communication by the Government of India, the Commissioner for Scheduled Caste and Scheduled Tribe submitted his 22nd report wherein he pointed out that instances had come to his notice where false certificates were produced by non-Scheduled Caste/Scheduled Tribe persons to secure government service or admission to educational institutions.

The report disclosed that such certificates were being issued without the authority issuing the same being even aware of basic requirements necessary for such certificates. On the basis of the recommendations made by the Commissioner the Government of Maharashtra, in modification of the existing orders directed that caste certificates issued by the Special Executive Magistrates should be treated as "preliminary certificates" and final certificates should be issued only by the Executive Magistrate authorised by the District Magistrate in that behalf. It was also directed that the Special Executive Magistrate should certify only the castes to which they themselves belonged. In the instructions appended to the said Government Order it was, inter alia, stated in paragraph 19 as under:

Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State from which he has migrated. The competent authority should not, therefore, issue a caste certificate to a person from other State, whether he is ordinary (sic) residing in this State or not.

9. By a subsequent letter of 12th February, 1981, it was further clarified that in order to become eligible for being treated to be a member of Scheduled Caste/Tribe in relation to the State of Maharashtra a person should be a permanent resident of the State of Maharashtra before August 10, 1950, and September 6, 1950, respectively, the dates of the notifications of the respective Presidential Orders of 1950 Scheduling the Castes/Tribes in relation to the State of Maharashtra. Since there was no State of Maharashtra in 1950 it would be reasonable to understand it to mean the geographical area now forming part of the State of Maharashtra. At the foot of the proforma of the Certificate the following note was appended:

NOTE: The term "Ordinarily reside(s)" used here will have same meaning as in Section 20 of the Representation of Peoples Act, 1950.

10. It seems that in course of time persons belonging to Scheduled Caste/Tribes who had migrated from one State to another in search of employment or for education purpose and the like, experienced great difficulty in obtaining Caste/Tribe Certificates from the State from which they had migrated. To remove this difficulty experienced by them the earlier instructions contained in the letter of March 22, 1977, and the subsequent letter of March 29, 1982, were modified, in that, the prescribed authority of a State/Union territory was permitted to issue the Scheduled Caste/Scheduled Tribe Certificate to a person who had migrated from another State on production of a genuine certificate issued to his father by the prescribed authority of the State of the father's origin except where the prescribed authority considered a detailed enquiry necessary through the State of origin before issue of certificate. Of course, this facility did not alter the Scheduled Caste/Tribe status of the person in relation to the one or the other State. It was clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of education,

employment, etc., will be deemed to be Scheduled Caste/Tribe of the State of his origin only and will be entitled to derive benefits from that State and not from the State to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate. This was reiterated in a subsequent letter dated October 15, 1987 addressed to Smt. Shashi Misra, Secretary, Social Welfare Affairs in the State of Maharashtra. In paragraph 4 of that letter it was specifically stated:

Further, a Scheduled Caste person, who has migrated from the State of his origin, which is considered to be his ordinary place of residence after the issue of the first Presidential Order 1950, can get benefit from the State of his origin and not from the State to which he has migrated.

11. It will thus be seen that so far as the Government of India is concerned, since the date of issuance of the communication dated March 22, 1977, it has firmly held the view that a Scheduled Caste/Scheduled Tribe person who migrates from the State of his origin to another State in search of employment or for educational purposes or the like, cannot be treated as a person belonging to the Scheduled Caste/Scheduled Tribe of the State to which he migrates and hence he cannot claim benefit as such in the latter State. A combined reading of the communication of the Central Government dated 22nd March, 1977 and the notification issued by the State of Maharashtra from time to time, it is clear that persons who are born after the date of the notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste/Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order. Therefore, there is no scope for holding that the migrate's son/daughter is entitled to claim benefits or privileges of the Presidential Order in a State other than the State of origin of his or her father. It is well settled that the caste of the person depends upon the caste of his father and therefore the children of the migrant will not be treated separately from their father.

In the result, the petition is dismissed.