

(1990) 04 GUJ CK 0014

In the Gujarat High Court

Case No : Letters Patent Appeal No. 81 of 1990

State of Gujarat and Another

APPELLANT

Vs

R.L. Patel

RESPONDENT

Date of Decision : 04-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 342

Citation : AIR 1992 Guj 42 : (1990) 2 GLR 1163

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;N.B. Patel, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; Y.N. Oza, for the Respondent

Judgement

This Judgment has been overruled by : Inder Parshad Vs. Union of India (UOI) and Others, (1998) 4 JT 440 : (1994) 2 SCALE 553 : (1994) 5 SCC 239

Gokulakrishnan, C.J.—Notice, Mr. Y. N. Oza, who has filed caveat, appears and waives service of notice on behalf of the respondent. The Letters Patent Appeal is taken up for hearing, by consent of both the parties, today.

2. The short facts of this case for the purpose of disposal of this Letters Patent Appeals are;

The respondent herein appeared in the Gujarat Public Service Commission Examination held in the year 1986 for Gujarat Civil Service Class I/II posts. It is the averment of the respondent that he belongs to the Scheduled Tribe, i.e. Dhodia caste and comes from the Union Territory called Dadra and Nagar Haveli. The Public Service Commission, by its letter dated 4th April, 1989, which is subsequent to the respondent writing the examination for the Gujarat Civil Services Class I/II posts, has stated as follows:

" xxx xxx xxx

Subject: Gujarat Administrative Services Class-I and Gujarat Civil Services Class-I/ II-Examination of June, 1986

Sir,

As per the Advertisement No. 25/1985 issued by the Commission in the above referred subject, candidates of Gujarat origin are entitled for benefit of reservation kept for Scheduled Castes, Scheduled Tribes and Economically and Educationally Backward category. Considering the clarification issued by the Government in respect of your candidature as Scheduled Tribe candidate for the aforesaid Examination, you are not entitled for benefit of reservation in the category of Scheduled Tribe, since you are not of Gujarat origin and therefore, the Commission has decided to cancel your admission in the Examination of Gujarat Administrative Services Class-I and Gujarat Civil Services Class-I/II held in June, 1986 (reference to advertisement No. 25/1985) which may please be noted.

No further communication in this subject matter will be taken into consideration which may also be noted.

xx xx xx "

In as much as the respondent's admission in the examination of Gujarat Administrative Service Class-I and Gujarat Civil Services Class-I/II held in June, 1986 has been cancelled by the above said letter issued by the Gujarat, Public Service Commission", the respondent has come forward with Special Civil Application No. 3876 of 1989, praying for issue of a writ of mandamus or any other appropriate writ, quashing or setting aside the order of the Gujarat Public Service Commission dated 4th April, 1989, which is Annexure "A" to the Special Civil Application and also for giving direction to the appellant herein to declare the result of the respondent and to give him suitable recruitment in the services of the State of Gujarat. Necessary prayer for interlocutory order has also been made in the Special Civil Application. On the prayer for interim order, the High Court passed an order originally not to declare the result of the respondent herein and subsequently, on 4-8-1989, it passed the following order:

"By way of interim relief, the respondents (i.e. the appellants herein) are directed that the result of the petitioner (the respondent herein) should not be declared, and in case of the postings of the selected candidates, one post in Class-I cadre be kept vacant till further orders."

Subsequent to this order, the respondent herein has come forward with Civil Application No. 1799 of 1989, praying that a direction should be given to the appellants herein to declare the result of the respondent herein and for appointing the respondent herein on any suitable post on the basis of his result. On this civil application, a learned single Judge of our High Court has passed the following order:

"xx xx Since the petitioner (respondent herein) has strong prima facie case, further interim relief is granted, directing the respondents (the appellants herein) that the result of the petitioner (respondent herein) be declared and if he is

selected on the basis of his Scheduled Tribe status he shall be given appointment and posting on the basis of his merit and on the basis that he belongs to the Scheduled Tribe. The result shall be declared within 15 days from today and if the petitioner (respondent herein) is entitled to any posting or appointment, the same shall be done within two weeks thereafter. This will be subject to the result of the petition. D. S. C. A. is granted accordingly."

It is as against this order, the present Letters Patent Appeal has been filed.

3. Mr. R. J. Oza, learned counsel appearing for the appellants, the State of Gujarat" and the Secretary, Public Service Commission, contended that since the respondent is not of Gujarat origin, he is not entitled to the benefit that have been conferred upon the Scheduled Tribes. Secondly, he has contended that in as much as the respondent is relying upon the policy laid down by the Union of India, orders should not have been passed without making Union of India as a party respondent in the Civil Application. Thirdly, he argued that the learned single Judge having seen that an order has been passed after binary hearing of the parties, he should not have interfered with that order and modified" the same by giving the present modification order impugned in the Letters Patent Appeal. This is because of the fact that there is no fresh cause of action for the learned single Judge to, interfere with the order already passed. Finally and fourthly, the learned counsel submitted that the interim order is subject to the result of the main Special Civil Application and hence such an order without any", condition imposed upon the respondent-herein is a nullity.

4. We can dispose of the second, third and fourth submissions made by the learned., counsel without much difficulty. The Circular of the Government of India, which is dated 6th August, 1984, is pointed out for the purpose of treating the respondent as a member of the Scheduled Tribe. Even apart from this, Circular, it is not disputed that the Community of the respondent, according to the State of Gujarat comes under the category of Scheduled Tribes. There is no question of any dispute between the respondent and the Central Government in respect of the said Circular. We do not think that the argument as if the Central Government is a necessary party or otherwise the orders should not have been passed in the Civil Application requires any discussion. We do not find any substance in this argument advanced by the learned counsel appearing for the appellants herein" As regards his third contention to the effect that the modification should not have been effected, it is needless to say that there is no question of res judicata in modifying the; interlocutory orders passed by a learned single Judge. If circumstances warrant and justice requires on the facts and circumstances: of a particular case, it is open to the single Judge to modify the interim order of a single Judge or his own order in an interlocutory stage by modifying the same. As we have seen, the respondent has appeared for the examination in Class-I/II services conducted by the Gujarat Public Service Commission. By an ad interim order, his results were withheld. By subsequent order, a direction was given to reserve one post in Class I cadre be kept vacant

till further orders. By the present order impugned in the Letters Patent Appeal, the result of the respondent was directed to be declared and subject to the result of the main Special Civil Application, the appellants were directed to give appointment and posting to the respondent in case he has succeeded in the examination on the basis of his merit and on the basis that he belongs to the Scheduled Tribe. Hence, we do not think that there is any substance in the third contention raised by the learned counsel appearing for the appellants.

5. The fourth contention, which we have stated above, has no merits. It is too much to contend that unless conditions are imposed while giving interim orders, such an order cannot be sustained. It is for the learned Judge, who deals with such matter, to pass appropriate order and such order has been passed by the learned single Judge, subject to the result of the petition. If that be so, the contention of the learned counsel on this aspect of the case has no substance.

6. Coming to the first contention of the learned counsel appearing for the appellants to the effect that, since the respondent is of Gujarat origin, he is not entitled to be considered in the category of Scheduled Tribes, we can look into the relevant provisions on this aspect. The Gujarat Public Service Commission has cancelled the admission of the respondent in the examination of Gujarat Administrative Services Class-I and Gujarat Civil Services Class-I/II post on the basis that the respondent is not entitled to the benefit of reservation in the category of Scheduled Tribe since he is not of Gujarat origin. It is not disputed, both by the learned counsel appearing for the appellants and by the learned counsel appearing for the respondent, that members of Dhodia community, to which the respondent belongs, come under Scheduled Tribe category. It is also stated in the petition filed by the respondent that the respondent belongs to the Dhodia caste, which is notified as Scheduled Tribe by Dadra and Nagar Haveli Administration and also by the Government of Gujarat and that the mother of the respondent is a native of Gujarat, namely Dungra, in the District of Valsad, in Gujarat State. Thus, according to the respondent, by birth, -he belongs to Dhodia caste of Gujarat State. Article 342 of the Constitution, which deals with the Scheduled Tribe, reads as follows:.

"342. Scheduled Tribes- (1) The President may with respect to any State or Union territory and where it is a State after consultation with the Governor thereof by public notification- specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

As we have stated, there is no dispute with regard to Dhodia caste belonging to the Scheduled Tribes as they are treated as Scheduled Tribes, both at Dadra and Nagar Haveli and also in Gujarat State. The Circular dated 6th August, 1984, issued by the Ministry of Home Affairs, Government of India, New Delhi; clarifies the position as to how a person has to be treated as Scheduled Tribe or "Scheduled Caste and "reads as, follows:

"2. The instructions issued in this Ministry's letter of even number dated the 18-11, 1982 wilt continue. It is, however, clarified that, the Scheduled Caste/ Scheduled Tribe person on migration from the State of his, origin to another State: will not lose his status. ,as Scheduled Caste/ Scheduled Tribe but he will be entitled to the concessions/benefits admissible to the Scheduled Castes/ Scheduled Tribes from the State of his origin and not, from the State where he has migrated. xxxxx"

Interpreting this direction given by the Circular, it is clear that this is a beneficial circular in favour of the Scheduled Tribes and Scheduled Castes and has made it clear that if a" person is a Scheduled Tribe in the State of his origin, he will not lose that status in the State, where he has migrated. We have already extracted Article 342, wherein the President declares such of those castes which belong to Scheduled Tribe. We have also stated in paragraphs supra that there is absolutely no dispute that Dhodia caste to, which the respondent belongs is a Scheduled Tribe. Thus, it is abundantly clear that both by Circular and also by virtue of the respondent being a Scheduled Tribe at Dadra and Nagar Haveli, which is a Union Territory, he gets the status of Scheduled Tribe in the State of Gujarat also. Even apart from this fact, in the State of Gujarat, such a community has been declared as a Scheduled Tribe. The learned single Judge has referred to the decision rendered in Special Civil Application No. 669 of 1987 and Special Civil Application No. 8487 of 1989 in support of the abovesaid conclusion. The learned Judge has also stated that the order in Special Civil Application No. 8487 of 1989 was taken by way of an appeal, namely LPA No. 40 of 1990, and the Division Bench of this Court agreed with the view taken in Special Civil Application No. 8487, of 1989. The decision given by the Division Bench of this High Court in LPA No. 40 of 1990 has been taken to the Supreme Court by filing SLP No. 4978 of 1990 and said SLP has been dismissed by the Supreme Court by order dated 30th March, 1990. Considering the above said facts of the case and also the reasoning given by the learned single Judge while disposing of the interlocutory application, namely C.A. No. 1799 of 1989, we do not find any merits in any of the contentions raised by the appellants herein and accordingly, this Letters Patent Appeal is dismissed.

7. Appeal dismissed