
(2009) 09 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (C) No's. 2754, 3143 and 3342 of 2009

Subungcha Mwshahary and Others

APPELLANT

Vs

Assam Public Service Commission and Others

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 13, 15(4), 16(4), 16(4A), 341

Citation : (2009) 4 GLT 308

Hon'ble Judges : Ranjan Gogoi, Acting C.J.; B.P. Katakey, J

Bench : Division Bench

Advocate : N. Dutta, B. Pathak, T. Deori, A.M. Buzarbaruah, B. Ahmed, N. Haque and S.K. Deori, for the Appellant; K.N. Choudhury, A.K. Goswami, S. Banik, P. Bhuyan, K.N. Suri and P.S. Deka, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, Actg. C.J.

1. The similarity of the challenge made in the three writ petitions had led to analogous hearing of the cases which are being attempted to be disposed of by this common judgment and order.

2. In W.P. (C) No. 2754/2009 the inclusion of the names of the Respondent Nos. 4 and 5 as Scheduled Tribe(P) candidates in the final select list dated 15.6.2009 published by the Assam Public Service Commission has been assailed. The aforesaid select list has been prepared pursuant to the Combined Competitive Examination held by the Commission for recommendation of names for appointment in the Assam Civil Service, Assam Police Service and allied cadres. While in W.P. (C) No. 3342/2009 the said selection of the Respondent Nos. 4 and 5 has again been challenged by the Petitioner therein, in W.P. (C) No. 3143/2009 it is the selection of one of the Respondents i.e. Sri Juga Krishna Rajbongshi alone which has been assailed.

3. The short case of the Petitioners as pleaded in the writ petitions is that the

Respondent Sri Juga Krishna Rajbongshi belongs to the Koch Rajbongshi community which was, for a particular period of time, recognized as a Scheduled Tribe (P). However, the ordinances giving such recognition had lapsed, whereafter, according to the Petitioners, the Koch Rajbongshis were reverted to their original status as members of Other Backward Class. Notwithstanding the above, it is contended, the said Respondent had applied and has been selected as a Scheduled Tribe (P) candidate. In so far as the Respondent Dr. Bidyut Das Boro is concerned, it has been stated by the Petitioners that the father of the said Respondent is not a member of any reserved category whereas his mother belongs to Scheduled Tribe (P). In such circumstances, according to the Petitioners, the Respondent Dr. Bidyut Das Boro could not have been accorded the status of a Scheduled Tribe (P) candidate. It is on the aforesaid broad premises that the selection of the two Respondents as Scheduled Tribe (P) candidates have been questioned in the writ petitions filed.

4. Affidavits have been filed by both the Respondents as well as by the Assam Public Service Commission. According to the Respondent, Juga Krishna Rajbongshi, his father is a member of the "Kachari" community which is recognized as a Scheduled Tribe (P) in the State of Assam under the Constitution (Scheduled Tribes) Order, 1950 (as amended). In support, the said Respondent has brought on record the Scheduled Tribe Certificate issued to his father as well as the service records of his father. Additionally, the Schedule Tribe Certificate issued to the Respondent Juga Krishna Rajbongshi has also been enclosed to the affidavit filed.

5. In so far as the Respondent Dr. Bidyut Das Boro is concerned, it has been stated in the affidavit filed by the said Respondent that his father had married his mother who belonged to the "Mech" community recognized as a Scheduled Tribe (P) in the State of Assam. According to the Respondent, his father thereafter merged in the "Boro" community in the year 1980 and was accepted by the said community which is evident from a certificate dated 1.1.80 to that effect issued by the Dispur Boro Samaj. The said certificate has been enclosed to the affidavit of the Respondent. The Respondent, Dr. Bidyut Das Boro, has also brought on record a Government Memorandum dated 30.10.89 to show that the offspring of a Scheduled Tribe (P) mother who may have married a person of the general category can be accorded the Scheduled Tribe (P) status provided that such offspring has been brought up in the Scheduled Tribe (P) community and the said community has accepted such offspring as its member.

6. In so far as the Public Service Commission is concerned, in the affidavit filed it has been stated that while the Respondent Juga Krishna Rajbongshi was considered as a member of the "Mech Kachari" community on the basis of the certificate produced by him, the other Respondent i.e. Dr. Bidyut Das Boro was treated as a "Boro Kachari" candidate which was also certified by the competent body.

7. The Petitioner in W.P. (C) No. 3143/2009 has filed a rejoinder affidavit wherein

it has been stated that under the Constitution (Scheduled Tribes) Order, 1950 (as amended) there is no group or community called "Mech Kachari" which is recognized as a Scheduled Tribe (P) in the State of Assam. In the said affidavit the Petitioner has contended that in the Constitution (Scheduled Tribes) Order, 1950 there is a reference to "Boro Kachari"; "Kachari Sonowal" as well as to "Mech" as members of Scheduled Tribe (P). "Mech Kachari" is not mentioned as one of the recognized Scheduled Tribe (P) communities in the State. Furthermore, in the rejoinder affidavit the Petitioner has taken the stand that it is evident from the caste certificate enclosed to the affidavit of the Respondent Juga Krishna Rajbongshi that the word "Mech" as appearing in the said certificate has been subsequently added after the word "Kachari". According to the Petitioner, such insertion has been subsequently done in a different ink and in a different handwriting.

8. We have heard Sri N. Dutta, learned senior counsel for the Petitioner in W.P. (C) No. 3143/2009; Sri A.M. Buzar Baruah, learned Counsel for the Petitioner in W.P. (C) No. 3342/2009 and the Petitioner appearing in person in W.P. (C) No. 2754/2009. We have also heard Sri A.K. Goswami, learned senior counsel for the Respondent Juga Krishna Rajbongshi; Sri Basumatary, learned Counsel for the Respondent Dr. Bidyut Das Boro as well as Sri K.N. Choudhury, learned senior counsel appearing on behalf of the Commission and Sri P.S. Deka, learned Govt. Advocate, Assam.

9. Sri Dutta, learned senior counsel for the Petitioner in W.P. (C) No. 3143/2009 has urged that under the Presidential Order, as amended, "Mech Kachari" is not one of the recognized Scheduled Tribe (P) in the State of Assam. Referring to the said order, Sri Dutta has submitted that though "Kachari" and "Mech" find mention in the Constitution Order, no tribe known as "Mech Kachari" finds mention therein. Referring to the judgment of the Apex Court in Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, , Sri Dutta has submitted that in the said case it was held by the Apex Court that:

Presidential declaration, subject to amendment by Parliament being conclusive, no addition to it or declaration of castes or sub-castes/ parts of or groups of tribes or tribal communities is permissible.

Also relying on the aforesaid judgment of the Apex Court in Kumari Madhuri Patil (supra) and a subsequent judgment in the case of State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, , Sri Dutta has submitted that the Scheduled Tribe status of the Respondent Juga Krishna Rajbongshi will require determination by the Review Committee contemplated in the aforesaid two decisions of the Apex Court. In this regard, Sri Dutta has pointed out that by Notification dated 18.5.2009 a State Level Scrutiny Committee has been constituted for verification of caste certificates for Scheduled Castes, Scheduled Tribes and Other Backward Candidates as per the Hon"ble Supreme Court's order in Kumari Madhuri Patil (supra).

10. Sri AM Buzarbaruah, learned Counsel for the Petitioner in W.P. (C) No. 3342/2009 has adopted the arguments advanced by Sri N. Dutta, learned Counsel for the Petitioner in W.P. (C) 3143/2009 in so far as the Respondent Juga Krishna Rajbongshi is concerned. Assailing the selection of Respondent Dr. Bidyut Das Boro, Sri Buzarbaruah has argued that voluntary merger and acceptance of the Boro community by the father of the said Respondent or similar acceptance by the said community will not confer on him the status of Scheduled Tribe (P). In this regard, reliance has been placed on two judgments of the Apex Court reported in Mrs. Valsamma Paul Vs. Cochin University and others, Anjan Kumar Vs. Union of India (UOI) and Others, Anjan Kumar v. Union of India and Ors.

11. The Petitioner appearing in person in W.P. (C) No. 2754/2009 has reiterated the arguments already advanced by the learned Counsels for the Petitioners in W.P. (C) Nos. 3143 and 3342 of 2009. Additionally, the Petitioner appearing-in-person has submitted that both the Respondents being guilty of misstatement and suppression of material facts, their candidatures should be declared to be invalid

12. Controverting the submissions advanced on behalf of the Petitioners, Sri A.K. Goswami, learned Counsel for the Respondent Juga Krishna Rajbongshi has contended that it is beyond dispute that the father of the said Respondent is a member of Scheduled Tribe (P) belonging to the "Kachari" community. Sri Goswami has specifically pointed out that the certificate and service records of the father of the Respondent Juga Krishna Rajbongshi placed before the Court along with the affidavit of the said Respondent is not in dispute. In such circumstances, relying on a judgment of the Apex Court in Punit Rai Vs. Dinesh Chaudhary, it has been submitted that the Respondent Juga Krishna Rajbongshi should be recognized as a member of the "Kachari" community and, hence, a member of the Scheduled Tribe (P).

13. On the other hand, Sri Basumatary, learned Counsel for the Respondent Dr. Bidyut Das Boro has argued that the circular of the Government of Assam issued in the year 1989, which has been enclosed to the affidavit of the said Respondent, makes it clear that the mother of the Respondent being a member of Scheduled Tribe (P), the said Respondent is also entitled to the same status Sri Basumatary has further submitted that the judgments of the Apex Court, as placed before the Court, being subsequent to the merger of the father of the Respondent in the "Boro" community, the said judgments will not cover the case of the Respondent.

14. We have considered the rival submissions advanced on behalf of the parties. We have perused the affidavits on record as well as the contents of the enclosures thereto. While it is correct that the Scheduled Tribe (P) status of the father of the Respondent Juga Krishna Rajbongshi as a member of the "Kachari" community is not in dispute, the certificate issued to the said Respondent is to the effect that he is a member of the Scheduled Tribe (P) being a "Mech Kachari". The Court will, therefore, have to proceed on the basis that the

Respondent Juga Krishna Rajbongshi is a "Mech Kachari". In the Presidential Order, as amended, "Mech Kachari is not one of the Scheduled Tribe (P) recognized in the State of Assam. The said Presidential Order makes a reference to "Mech", "Kachari" and also to "Boro Kachari" and "Kachari Sonowal" as recognized Scheduled Tribes (P) in Assam but not to "Mech Kachari". In such a situation, a question will arise whether there is a community called "Mech Kachari" and, if so, whether the same is identical to the "Mech" or the "Kachari" community. In the event there is no community or group known as "Mech Kachari", the further question that will arise is why the word "Mech" (within bracket) was added to the certificate and whether the same was done by the issuing authority at any acceptable point of time.

15. We have noted the decision of the Apex Court in Punit Rai (supra) relied upon by Sri A.K. Goswami, learned Counsel for the Respondent Juga Krishna Rajbongshi. Not only the observations contained in para 41 of the aforesaid judgment was in the context of an election trial where the basic facts were already before the Court, a further question would still arise which would need resolution, namely, if the father of the Respondent Juga Krishna Rajbongshi is a "Kachari" why he has been certified to be a "Mech Kachari". The said question, naturally, has relevance to the several issues that arise for factual determination as already set out above.

16. No material has been laid before the Court to enable it even to attempt to answer the said question. At the same time, on the basis of the decisions of the Apex Court in Kumari Maduri Patil (supra) and Ravi Prakash Babulalsing Parmar (supra), such questions are required to be resolved by the duly constituted Scrutiny Committee. Such a Committee has already been constituted in the State of Assam by Notification dated 18.5.2009. It is, therefore, our considered view that the above questions should be decided by the Scrutiny Committee constituted by the above stated Notification along with other relevant questions that will have to be determined for recording a final conclusion on the caste status of the Respondent Juga Krishna Rajbongshi. Such determination will be made as early as possible and, in any case, within a period of two months from the date of receipt of this order. Until such time the disputed slot in the select list shall not be filled up.

17. Coming to the case of the Respondent Dr. Bidyut Das Boro, on the facts already noticed, the question that arise for determination by the Court is whether the said Respondent is entitled to be treated as a member of the Scheduled Tribe (P) either on the basis that his mother is a Scheduled Tribe (P) or in the alternative on the basis of the fact that his father who does not belong to any reserved category had merged in the Boro community and has been accepted as a member of the said Boro community.

18. In Valsamma Paul (supra), the Apex Court was dealing with a situation where a Syrian Christian (forward class) lady had married a Latin Christian (backward class). The Syrian Christian lady had claimed the benefit of reservation for a post

that she had applied for. While answering the aforesaid issue the Apex Court took the view that after marriage the wife becomes an integral part of the husband's marital home and further that recognition or acceptance by the community of the husband is not the decisive factor. The Apex Court further held that when a person gets transplanted into any reserved category,

he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in the Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

19. In Anjan Kumar (supra), the Apex Court was considering the claim of the Scheduled Tribe status of an offspring of a Scheduled Tribe (P) mother and a father belonging to the forward caste. Rejecting the claim, the Apex Court took the view that Article 341, 342, 15(4), 16(4) and 16(4-A) of the Constitution seeks to provide preferential treatment to certain castes and tribes having regard to the economic and educational backwardness and other disabilities they suffer from. In para 14 of the aforesaid judgment, the Apex Court took the view that an offspring of a tribal woman (backward class) married to a non-tribal husband (forward class) cannot claim the Scheduled Tribe status as such offspring was brought up in the atmosphere of the forward class and he has not suffered any disability. In the afore-said case the Apex Court also had the occasion to consider a Government Circular dated 4.3.1975 which is largely similar to the Memorandum of the Government of Assam dated 30.10.89. In that context the Apex Court observed that such circulars are not law within the meaning of Article 13 of the Constitution and would be devoid of any legal consequences in view of the provisions contained in Article 341, 342, 15(4), 16(4) and 16(4-A) of the Constitution.

20. Applying the parameters of law laid down by the Apex Court in the above two cases, it has to be held that the Respondent Dr. Bidyut Das Boro is not entitled to be recognized as a member of the Scheduled Tribe (P) either on the basis of his claim to be an offspring of a Scheduled Tribe mother or on the basis of the claim that his father had merged in the Boro community and had been accepted by the said community. The Court, therefore, has to come to the conclusion that the selection of the Respondent Dr. Bidyut Das Boro as a Scheduled Tribe (P) candidate is legally infirm. Consequently, the said selection is set aside.

21. In view of the discussions that have preceded, all the writ petitions shall stand disposed of in the light of the observations and directions contained in the present order.