
(2004) 04 PAT CK 0050

Patna High Court

Case No: LPA Nos. 769, 799 of 2003 and 1351 of 2001

Subrat Prasad

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: April 7, 2004

Citation: (2004) 04 PAT CK 0050

Judgement

Nagendra Rai, J.

This order disposes of LPA No. 767 of 2003 arising out of CWJC No. 6854 of 2002, LPA No. 799 of 2003 arising out of CWJC No. 14573/2001 and LPA No. 1351 of 2001 arising out of CWJC No. 14017 of 2001.

2. CWJC No. 6854 of 2001 was originally filed to quash the order of the District Magistrate dated 3.6.2002 (Annexure 13 therein) by which the caste certificate issued to the appellant declaring him to be Scheduled Caste was cancelled. CWJC No. 14573 of 2001 was originally filed by the appellant to quash the circular dated 11.12.1985 (Annexure-5 therein) issued by the State Government, in partial modification of circular dated 3.3.1978, limiting the benefit of scheduled caste status to the offspring of a higher caste male and a scheduled caste female only in the event of a valid marriage between the two. CWJC No. 14017 of 2001 was originally filed to quash the enquiry report of the District Magistrate dated 1.10.2001 (Annexure 11 therein) holding that the petitioner had fraudulently obtained a caste certificate declaring him to be a scheduled caste in the facts and circumstances.

3. It would thus appear that the central issue in each controversy was the correct caste of the petitioner. It is not in controversy, and is an admitted fact, that the petitioner is the offspring as an illegitimate child borne out of the relationship contrary to law between Nirmala Devi, a scheduled caste lady and one Chanchal Prasad, a "Surhi" by caste. This categorization comes in the OBC category. The mother of the appellant, Nirmala Devi, was a scheduled caste. The father of the appellant thus admittedly belonged to a higher caste.

4. The State Government had issued a circular No. 99, dated 3.3.1978 to the effect that if a child be born to a higher caste Hindu father and a scheduled caste mother, the child would be entitled to and be categorised as a scheduled caste. Presumably it was on this basis that the appellant in the aforesaid appeals obtained a caste certificate declaring him to be a scheduled caste. Subsequently it appears that a complaint was made that the petitioner was not entitled to scheduled caste status as he was not the offspring of a valid marriage between Chanchal Prasad and Nirmla Devi. It was also contended in the enquiry held by the authorities to ascertain the same, that the mother of the petitioner was in fact Smt. Shyama Devi as mentioned in the enquiry report at Annexure 11 in CWJC No. 1407 of 2001. The State Government thereafter issued another circular dated 11.12.1985 bearing No. 605 in partial modification of its earlier circular dated 3.3.1978 limiting the benefit only to the offspring of a valid marriage between a higher caste Hindu male and a scheduled caste female.

5. It would thus to be seen that the State Government essentially desired a social mobilization and interaction by granting certain benefits of reservation to the offspring of a scheduled caste lady born out of only a valid marriage with a higher caste Hindu. The intention certainly was not to create sub-classification in reservation, as happens to be the case in the present controversy. The appellant, whose father admittedly comes in the OBC reserved category, desires further benefits of reservation by sub-classification and prays for a declaration that he is a scheduled caste ostensibly to derive better advantage.

6. The appellant in pursuance of a scheduled caste certificate issued to him earlier gained certain advantage by way of admission in the MBBC course which he has now completed. While the controversy remained pending and was the subject of litigation before this Court in several writ applications, the appellant was provisionally granted admission in the MS (Orthopedic) course by an order passed in CWJC No. 9865 of 2001. Thus, this benefit as availed by the appellant for reasons of his caste status as a scheduled caste. It is the case of the appellant himself that but for this scheduled caste certificate he would be qualified for admission in MS (Surgery) course as a general category candidate where his rank was 39 as distinct from his scheduled caste category rank of No. 1. It would thus be seen that the benefit of admission to the MS (Ortho) course was made available to the petitioner due to his claimed status of a Scheduled Caste thus placing him at serial No. 1 of the Scheduled Caste category. It was in the aforesaid facts and circumstances that it became essential for the appellant to challenge the Government circular dated 11.12.1985 limiting the aforesaid benefit only to the specified situation provided therein, of a valid marriage between a higher caste Hindu male and a scheduled caste female.

7. The Constitution provides for reservation as a measure of social upliftment. Reservation in admission or employment is one of the modes adopted to implement this constitutional mandate. The availability of admission to a candidate by reason of reservation would necessarily mean that the same be withdrawn from the general availability of seats in the institution. Every citizen has a right to apply and be considered

for admission in an institution of his/her choice. The provision for reservation is a reasonable inroad in the right of a normal citizen to be considered for admission. This inroad is based on a constitutional mandate. The effect of the same has its ramifications in the public as distinct from the laws of inheritance which has a distinct private characteristic. Thus the provisions of the Hindu Law of inheritance would not *stricto sensu* apply while considering the cases of admission to educational institutions. In the laws of inheritance, it is private rights which are being decided. On the contrary in the case of admission, public interest/rights is in issue. The benefit and interests of the public at large have to be kept in mind. Any interpretation, therefore, would have to be made in the context and background of the facts and issues of a particular case.

8. The contention raised on behalf of the appellant is that he being the offspring of a higher caste Hindu male and a scheduled caste female, even though illegitimate, was entitled to the benefit of scheduled caste status under the principles of inheritance prescribed in the Hindu Law whereby such an illegitimate son has also been conferred certain rights. The appellant also relied upon a compromise decree passed in Title Suit No. 85/95 filed by the appellant against his father with regard to inheritance right under the Hindu Law. The appellant further contends that his scheduled caste status having been accepted and acted upon by the authorities upto the stage of MBBS degree, it would not be proper to permit the respondents to now question the caste status of the appellant by any fresh enquiry. Counsel for the appellant also submitted that the subsequent circular dated 11.12.1985 was discriminatory inasmuch as it sought to make a distinction between the illegitimate son of a valid marriage between a higher caste Hindu male and a scheduled caste female as distinct from the illegitimate son borne out of a relationship contrary to law between them. This, in the opinion of the Court, is fully justifiable and lends credence to circular dated 11.12.1985 as being rationale in nature.

9. In the present case, the State Government has put forth valid and cogent justification for the modification of the earlier circular dated 3.3.1978 by limiting the benefit therein only to the cases of valid marriage between an upper caste Hindu and a scheduled caste lady. The circular also spells out the reason and justification for the same by way of rampant misuse. The respondents have further clarified that there were practical difficulties in the implementation of the circular dated 3.3.1978 and that the same was being misused/misutilised by inter alia exploitation of scheduled caste ladies. It was further contended that the earlier circular was also being misutilised by the upper caste persons to get their offspring illegally declared as scheduled caste by accepting a scheduled caste lady to consent to the factum of a non-existent marriage, then compromise the same fictionally in a Court of law and wrongly obtain benefits of scheduled caste status to the offspring of all such higher caste Hindu.

10. The appellant has contended that the aforesaid circular dated 11.12.1985 is invalid and contrary to Hindu Law and the Hindu Laws of inheritance. In support thereof, the appellant has relied upon the case of [Shyam Sunder Prasad Singh and Others Vs. State of Bihar and Others](#). The reliance is placed upon a singular line "a damsel's child is one

borne of a unmarried woman; he is considered as the son of his male grandsire". This Court is of the opinion that the said judgment, a treaties on Hindu Law in a different context, is not applicable in the facts and circumstances of the present case. It needs no reiteration that reliance cannot be placed upon a single line from a judgment rendered in a different context and grant the status of a "law" to the same. The controversy herein relates to grant of certain social benefits and limiting thereof for specified reasons. The appellant also relied upon the judgment in the case of [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,](#) . In the opinion of this Court in the said judgment, more particularly in the initial lines of paras 13 and 16, would be and is detrimental to the cause of the appellant himself.

11. The Apex Court in a recent pronouncement in the case of [Punit Rai Vs. Dinesh Chaudhary,](#) , while considering the caste status in the context of a controversy under the Representation of People Act has held that "determination of caste of a person is governed by the customary laws. A person under the Customary Hindu Law would be inheriting his caste from his father". The Apex Court white dwelling on the subject considered the legality and validity of the circular dated 3.3.1978 and held that the same had not been issued by the State Government in exercise of its power under Article 162 of the Constitution of India and there was nothing to show that it was a decision taken by the Cabinet or by an authority in this behalf in terms of Article 166(3) of the Constitution of India. The Apex Court further went on to hold that the State has no jurisdiction to reserve a constituency for a person who does not belong to a reserved category for whose benefit it was constituted except by any of legislation. It would thus be seen that by the aforesaid judgment the very sub-stratum of the appellant"s claim would vanish.

12. In the facts and circumstances of the present case, the learned Single Judge rightly concluded that the appellant was already the beneficiary of reservation (read OBC category) in the schedule. Any further benefit to the appellant, was therefore not justified and could be only at the cost of another needy recipient. The appellant, therefore, could not be permitted to misutilise the same. The learned Single Judge after considering the matter and for the reasons stated in the judgment has arrived at the conclusion that the circular dated 11.12.1985 was valid and justified in law. The grant of scheduled caste certificate to the appellant earlier was therefore justifiably cancelled. The learned Single Judge, however, did grant limited relief to the appellant by refusing to disturb the benefit of completion of the MBBC course as a scheduled caste candidate, on the ground of equity. However, the appellant has been denied the benefit of scheduled caste status for admission in the MS (Ortho) course which in any event was granted provisionally and conditionally.

13. The enquiry conducted by the District Magistrate has also arrived at the finding that the appellant had obtained a scheduled caste certificate by fraud. It is trite law that fraud unravels everything. No one can be allowed to obtain or retain an advantage obtained by fraud muchless seek the Court"s jurisdiction in equity or otherwise to retain this benefit obtained by fraud. The fraud in the present case is the subject matter of investigation and

the law would take its own course in regard to the same.

14. Before parting with the case, this Court considers it desirable to only leave it to the authorities to consider the case of the appellant for admission to the MS (Surgery) course in accordance with law if the appellant shall request for the same.

15. In the result, this Court finds no reason to interfere with the judgment and order dated 8.7.2003 passed in CWJC No. 6854 of 2002 and 14573 of 2001. As a result of the dismissal of LPA Nos. 767 of 2003 and 799 of 2003 arising out of the same, CWJC No. 14017 of 2001 giving rise to LPA No. 1351 of 2001 also stands dismissed.

Navin Sinha, J.

16. I agree.