
Sheetal Vs State of Maharashtra and others

Writ Petition No. 2819 of 2006

Court: Bombay High Court (Nagpur Bench)

Date of Decision: June 18, 2007

Acts Referred:

Constitution of India, 1950 – Article 341, 342

Hon'ble Judges: R.C. Chavan, J; A.H. Joshi, J

Bench: Division Bench

Advocate: S.M. Ghodeswar, for the Appellant; T.D. Khade, A.G.P., For respondents No. 1 to 3, for the Respondent

Judgement

R.C. Chavan, J.

Rule is made returnable forthwith. Heard by consent of parties.

2. Petitioner born at village Shivpuri in Chhindwara district of Madhya Pradesh to parents who belong to Mahar caste, was appointed in Western

Coalfields Ltd., which has its headquarter at Nagpur. She obtained caste certificate which had to be got verified by respondent No. 3 Divisional

Caste Certificate Scrutiny Committee. Accordingly her claim, with relevant documents, was referred to the Caste Scrutiny Committee. The

Committee, by its impugned communications dated 24-11-2004 and 3-12-2004, refused to entertain petitioner's caste claim and informed her

that since the petitioner was a migrant she was not entitled to have her caste claim scrutinized. Since her subsequent representations did not yield

any results the petitioner has ultimately approached this Court by filing present petition on 16-1-2006.

3. Notice was issued to the respondents. On behalf of respondent No. 3-Caste Scrutiny Committee an affidavit in reply has been filed, where it

has been reported that since the petitioner was born in Chhindwara district of Madhya Pradesh she was not resident of State of Maharashtra and

therefore, in view of GRs dated 24th August, 1995 and 21st August, 1996 her caste claim cannot be entertained by respondent No. 3.

4. We have heard both, learned Advocate for the petitioner and learned Assistant Government Pleader for the respondent-State.

5. Chhindwara was a part of erstwhile State of Madhya Pradesh with Nagpur as its capital. The question about caste claim of persons who

become migrants because of re-organisation of State had been considered by the Apex Court in *Sudhakar Vithal Kumbhare Vs. State of*

Maharashtra and Others, . While considering a case similar to that of the petitioner, in *Hitesh Dasiram Murkute Vs. State of Maharashtra and*

Others, following the observations of the Supreme Court in *Sudhakar's* case, this Court had concluded as under:

41. To sum up :

(i) It is necessary to give full effect to both the expressions ""for the purpose of this constitution"" as well as ""in relation to the State"", appearing in

Articles 341 and 342 of the Constitution and Clause 2 of the Constitution Scheduled Tribe and Scheduled Castes Orders, 1950, in order to

identify the beneficiary correctly i.e. by ensuring that he belongs to caste identified with reference to a State as scheduled caste or tribe,

(ii) The object of including a caste or a tribe in the schedules to the orders was to do away with their disadvantaged position in the areas where

they resided vis-a-vis other population. The crucial test would therefore be whether the person concerned suffers the same degree of disadvantage

vis-a-vis other segments, as other local people of his caste suffer or whether as a migrant, he is placed on a higher pedestal.

(iii) Extending benefits to a migrant does no offence to the expression "in relation to the State" in Articles 341/342 of the Constitution or Clauses 2

of Scheduled Caste/Scheduled Tribes Orders, 1950, since entitlement of such a person would have to be still decided with reference to the origin

of such migrant and identification of migrant's caste as backward in relation to such State.

(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the schedule on the date of such inclusion with

reference to locality identified in the schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of

inclusion of caste in schedule from a place identified in the schedule. In other words, the relevant date is not date of migration but date of inclusion

of caste or tribe in the schedule.

(v) Reorganization of States did not proceed on the basis of castes or tribes but on linguistic basis and therefore, localities of persons entitled to the

benefit of reservation got divided in different States.

(vi) If upon removal of area restrictions, in the entire area of the State as originally existed on the date of notification of Constitution (Scheduled

Castes/Scheduled Tribes) Orders, the persons concerned could avail of the benefits of reservation, there is no reason why they should be denied

such benefits upon reorganization of the States, in which a part of their locality was included.

(vii) The ratio of the decision in *Marri Chandra* is only that a migrant would be disentitled for reservation in the State of migration if his caste is not

notified as scheduled caste or scheduled tribe in the State of migration. (Since in Marrie Chandra's case the caste ""Gouda"" was notified in the

State of Andhra Pradesh but not in Maharashtra). It would be impermissible to conclude that even though his caste is so notified in the State of

migration, he would be disentitled to benefits, since such conclusion would frustrate the very object of providing benefits enumerated at (ii) above.

(viii) In Action Committee while explaining and following the ratio in Marri Chandra's case, the Apex Court must be held to have merely sought to

deny benefits to migrants belonging to a caste of same nomenclature, by consciously choosing the expression ""same nomenclature "" and avoiding

the use of words ""same caste "" . This implies that if persons belong to the "same caste" they were not to be denied the benefits.

(ix) Sections 26 and 27 of the Bombay State Reorganization Act merely amend the schedules as a corollary to creation of State of Maharashtra

and have no bearing on the question of entitlement of the migrants to reservation with reference to date on which the State was created,

(x) As held by the Apex Court in Sudhakar vs. State, if a migrant belonged to a community which was recognised as scheduled caste or scheduled

tribe in any locality which has been divided upon reorganization of States and his caste is recognised as Scheduled Caste/Scheduled Tribe even in

such newly formed States, the migrant would be entitled to benefit of reservation even in the State in which part of the locality other than his place

of origin has gone.

6. In Hitesh vs. State we have elaborately dealt with the question of scrutiny of caste claims of the persons like petitioner, who become migrants

simply because their localities get severed from the area to which they naturally belong, due to reorganization of States. Rather than repeat those

reasons, for the reasons stated in the said judgment, we hold that the impugned communications dated 24-11-2004 and 3-12-2004, whereby

respondent No. 3 Committee declined to consider caste claims of the petitioner, are quashed and set aside and respondent No. 3 Committee is

directed to decide petitioner's caste claim, as far as possible, within a period of six months from 2nd July, 2007 on which date the petitioner shall

herself appear before the Committee with all requisite documents and shall continue to so appear before the Committee as and when directed by

the Committee.

7. In the circumstances, the parties shall bear their own costs.