

CASE DETAILS

ASTHA GOPAL KHAKRA

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal no. 7524 of 2019)

OCTOBER 11, 2023

[HRISHIKESH ROY AND SANJAY KAROL, JJ.]

HEADNOTES

Issue for consideration: High Court if erred in rejecting the appellant's claim as belonging to the Nomadic Tribe-Lohar.

Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 – rr.3, 16 – Claim of the appellant as belonging to the Nomadic Tribe-Lohar, rejected – Legality:

Held: For verification of Caste status, the claimant was required to furnish the information mentioned in r.16 which specified the documents to be furnished as primary information and evidence – Amongst the mentioned documents, the claimant may furnish School Leaving Certificate of a relative – She must also indicate proof of permanent residence in the State of Maharashtra, prior to the deemed date i.e., 21.11.1961 – School leaving certificates of the appellant's two paternal uncles clearly demonstrated that the appellant's grand-father had got his two sons (uncles of the appellant) admitted into the Municipal School at Akola on 12.08.1960 and 18.07.1961 respectively – This itself would clearly establish that the fore-fathers of the appellant had migrated and set up residence in Akola in Maharashtra, prior to the deemed date of 21.11.1961 – The school leaving certificates would also satisfy the condition for residence mentioned in r.3 – Scrutiny Committee and the High Court erred in rejecting the appellant's claim as belonging to the Nomadic Tribe-Lohar – High Court additionally fell into an error by recording that the appellant's grand-father's name does not figure in the family tree – Decision of the Scrutiny Committee and also the impugned judgment of the High Court are unsustainable – Appellant belongs to the

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ORS.**

Nomadic Tribe-Lohar – Since she has completed her education in BDS course from respondent no.3, by virtue of the present judgment, her results should now be declared. [Paras 8, 16, 18 and 20]

LIST OF CITATIONS AND OTHER REFERENCES

Marri Chandra Shekhar Rao vs Dean, Seth G.S. Medical College & Ors. [1990] 2 SCR 843 : (1990) 3 SCC 130 – distinguished.

**OTHER CASE DETAILS INCLUDING IMPUGNED
ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7524 of 2019.

From the Judgment and Order dated 18.09.2018 of the High Court of Judicature at Bombay at Nagpur in WP No.4051 of 2017.

Appearances:

Kunal Cheema, Apoorv Shukla, Raghav Deshpande, Advs. for the Appellant.

Aaditya Aniruddha Pande, Siddharth Dharmadhikari, Sourav Singh, Aditya Krishna, Gaurav Agrawal, Manan Daga, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

HRISHIKESH ROY, J.

Heard Mr. Kunal Cheema, learned counsel appearing for the appellant. Mr. Aaditya Aniruddha Pande, learned counsel appears for the State of Maharashtra and District Caste Certificate Verification Committee, Akola [respondent nos.1 and 2 respectively]. Mr. Gaurav Agrawal, learned counsel appears for the Maharashtra University of Health Sciences (Respondent No. 4).

2. The challenge here is to the judgment dated 18.09.2018 of the Division Bench of the High Court whereby the appellant's challenge to the finding of the District Caste Certificate Scrutiny Committee, Akola (for short, "Scrutiny Committee") invalidating her Caste Certificate was dismissed. The appellant claims to belong to Nomadic Tribe-Ghisadi of Maharashtra

mentioned at Entry (8) of Schedule II in the Government Resolution dated 21.11.1961 i.e., Ghisadi-Lohar. By virtue of Circular dated 27.03.1965, the appellant claims to belong to the Ghisadi-Lohar community which is made equivalent to Entry No. (8) of the Schedule II of the Resolution.

3. The fore-fathers of the appellant migrated from the State of Rajasthan and the appellant's grand-father settled in Akola, Maharashtra. The appellant sought recognition as Nomadic Tribe-Lohar and a certificate to this effect was issued to her on 10.08.2012 by the Sub-Divisional Officer, Akola. The Caste certificate issued to the appellant became the subject matter of scrutiny and in the Enquiry Report of the Vigilance Squad dated 27.12.2014 (Annexure P-10), it was reflected that the appellant's family originally belonged to Rajasthan but her grand-father-Mulchand had come to Akola in the year 1960 and was residing in the Mominpura Area in Akola as a tenant. Later, her grand-father purchased a plot of land in the year 1968 and constructed a house on the said plot and settled therein along with the other family members including the appellant's father.

4. However, notwithstanding the above finding of the appellant's grand-father having migrated to Akola in the year 1960, the Scrutiny Committee, Akola, on the basis of the material adduced opined that the appellant could not substantiate her caste claim and accordingly, the following decision was given against the appellant:

“1. The ‘Lohar’ (Nomadic Tribe-B) caste claim of the applicant - Astha Gopal Khakra is declared as Invalid.

2. The Sub Divisional Officer (S.D.O.), Akola is directed to impound the caste certificate No.MRC-81/Akola/F-238/2012-13 issued to Shri Astha Gopal Khakra immediately and take necessary action under section 10 (3) of the above Act.”

5. Following the above decision of the Scrutiny Committee, the aggrieved appellant filed Writ Petition No.4051/2017 which came to be dismissed in the first round on 11.09.2017. But the said Writ Petition was restored on 08.06.2018 by the Division Bench of the High Court and eventually the impugned order came to be passed on 18.09.2018.

6. The determination of the Caste status for the people in appellant's

category is to be made under the Maharashtra Scheduled Castes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 (for short, “the 2012 Rules”).

7. The 2012 Rules provide for constitution of the Scrutiny Committee to decide on the validity of a Caste Certificate. As the appellant’s family migrated from Rajasthan to Maharashtra, under the 2012 Rules, the appellant is required to establish that by the deemed date i.e., 21.11.1961, the appellant’s fore-fathers from the paternal side, had set up residence in the State of Maharashtra.

8. For verification of Caste status, the claimant is required to furnish the information mentioned in Rule 16 of the 2012 Rules which specifies the documents to be furnished as primary information and evidence. Amongst the mentioned documents, the claimant may furnish School Leaving Certificate of a relative. She must also indicate proof of permanent residence in the State of Maharashtra, prior to the deemed date i.e., 21.11.1961.

9. Besides other documents, the appellant produced her family tree where the name of her father – Gopal Mulchand and name of her grandfather Mulchand Hemraj Khakhara was shown. That apart the name of one uncle (father’s brother)-Ramavtar Mulchand and another uncle-Rajesh Mulchand was also reflected together with the name of the appellant’s cousin sister Shraddha [wrongly shown as Sudha]. She also produced the School Leaving Certificate issued to the appellant’s uncle Ramavtar Mulchand showing his school entry date as 12.08.1960 and the school leaving Certificate of the other uncle-Radheshyam Mulchand showing the school entry date as 18.07.1961. Both School Leaving Certificates show admission in the Municipal Corporation Hindi Balak School No. 1, Akola (for short, Municipal School at Akola) before the deemed date of 21.11.1961, mentioned in the 2012 Rules.

10. However, the Scrutiny Committee refused to accept the School Leaving Certificate issued for the uncle-Radheshyam Mulchand by observing that his name is not mentioned in the family tree of the claimant. Surprisingly, no weightage was given for the School Leaving Certificate of the other uncle Ramavtar Mulchand by the Scrutiny Committee.

11.1 Mr. Kunal Cheema, learned counsel appearing for the appellant would submit that the Scrutiny Committee mis-directed itself by relying on the ratio in *Marri Chandra Shekhar Rao vs Dean, Seth G.S. Medical College & Ors.* Reported in (1990) 3 SCC 130 as the said judgment is inapplicable for those whose claims are to be considered under the provisions of the 2012 Rules.

11.2 The appellant then argues that when the School Leaving Certificate of the uncle Ramavtar was very much available without being questioned by anyone, the Scrutiny Committee could not have rejected the appellant's claim by placing heavy reliance on the family tree which omitted to mention few relatives.

11.3 The argument of the counsel is that when the relationship of the appellant with her uncle and grand-father is established, her status in the State of Maharashtra should have been determined on the basis of the 2012 Rules.

11.4 Mr. Kunal Cheema, learned counsel contends that the High Court committed a serious error by wrongly observing that the appellant's grandfather Mulchand Hemraj was not mentioned in the family tree.

12.1 On the other hand, Mr. Aaditya Aniruddha Pande, learned Standing counsel for State would refer to the documents relied upon by the appellant before the Scrutiny Committee to point out that most of them are of dates subsequent to the deemed date of 21.11.1961 mentioned in the 2012 Rules and therefore, can be of no assistance to the appellant.

12.2 The learned Standing counsel however agrees that determination of the status of the appellant as a migrant family from Rajasthan is to be done as per the provisions of the 2012 Rules.

13. The family tree produced by the appellant clearly indicates that Mulchand Hemraj is the paternal grandfather of the appellant. Therefore, the Division Bench obviously misread the family tree in making the incorrect observation that name of the person Mulchand Hemraj, the appellant's paternal grand-father, does not figure in the family tree.

14. The School Leaving Certificate of Ramavtar (son of Mulchand Hemraj), the appellant's paternal uncle was made available before the Scrutiny Committee. The certificate indicated that Ramavtar took admission

in the Municipal School, Akola on 12.08.1960. Similarly, the other paternal uncle of the appellant Radheshyam, as is discernible from the School Leaving Certificate of the same school, took admission on 18.07.1961. Obviously, at the time when admission was taken in 1960 and 1961, it must be the grand-father Mulchand Hemraj who secured admission for his two young sons in the said Municipal School at Akola.

15. The “relative” as defined in Rule 2(h) of the 2012 Rules reads as under:

“(h) “relative” means a blood relative from paternal side of the applicant as per the geneology, except any particular tribe which has been notified by the Government from Nomadic Tribes and any particular caste or tribes as notified by the Government, from time to time;”...

16. The primary School Leaving Certificate of a relative from the parental side is one of the preferred documents for establishing a claim before the Scrutiny Committee. Appropriate certificates of the appellant’s two paternal uncles were produced indicating that the appellant’s grandfather had migrated and set up permanent residence at Akola on or before the deemed date i.e., 21.11.1961.

17. Notwithstanding the above, the appellant’s claim was rejected on the erroneous basis that she has not been able to produce any documents to the effect that her fore-fathers started residing in Maharashtra, prior to 1961. The two school leaving certificates of the two paternal uncles clearly demonstrate that the appellant’s grand-father had got his two sons (uncles of the appellant) admitted into the Municipal School at Akola on 12.08.1960 and 18.07.1961 respectively. This itself would clearly establish that the fore-fathers of the appellant had migrated and set up residence in Akola in Maharashtra, prior to the deemed date of 21.11.1961. The school leaving certificates would also satisfy the condition for residence mentioned in Rule 3 of the 2012 Rules. Yet a negative finding was given by the Scrutiny Committee which not only ignored the Enquiry Report of the Vigilance Squad made available on 27.12.2014 but also ignored the two school leaving certificates of the paternal uncles of the appellant.

18. The materials on record suggest that the appellant's grand father-Mulchand shifted to Akola sometime in the year 1960 and the two paternal uncles of the appellants were admitted to schools in Akola on 12.08.1960 and on 18.07.1961 well before the deemed date of 21.11.1961.

19. The Scrutiny Committee relied on the judgment in Marri Chandra Shekhar Rao (*supra*), but all we need to say is that the judgment is distinguishable as it was not concerned with the 2012 Rules but was concerned with the circular dated 22.02.1985 issued by the Government of India which indicated that migrants from one state to another will be entitled to derive benefits from the state of origin and not from the state to which the individual migrates. This judgment therefore can have no application in the facts of the present appeal.

20. The upshot of the above discussion is that the Scrutiny Committee and the High Court erred in rejecting the appellant's claim as belonging to the Nomadic Tribe-Lohar. The High Court additionally fell into an error by recording that the appellant's grand-father Mulchand's name does not figure in the family tree. In consequence, the decision of the Scrutiny Committee dated 06.03.2017 and also the High Court's impugned judgment dated 18.09.2018 are found to be unsustainable. Looking at the linkage demonstrated with her paternal grandfather who settled in Maharashtra prior to the deemed date i.e., 21.11.1961, the appellant should in our opinion be considered as belonging to the Nomadic Tribe-Lohar. It is declared accordingly. The appeal is allowed with such finding. In consequence, since the appellant has completed her education in BDS course from Yogita Dental College and Hospital (respondent no.3), by virtue of the present judgment, her results should now be declared. All consequential reliefs will follow.

Headnotes prepared by:
Divya Pandey

Appeal allowed.