

M.C.D vs Veena & Ors on 14 August, 2001

Bench: Doraiswamy Raju, S.R.Babu

CASE NO.:
Appeal (civil) 3045 of 1998

PETITIONER:
M.C.D.

Vs.

RESPONDENT:
VEENA & ORS.

DATE OF JUDGMENT: 14/08/2001

BENCH:
Doraiswamy Raju, S.R.Babu

JUDGMENT:

U D G M E N T RAJENDRA BABU, J. :

In these cases we have to decide the issue as to whether the certificates of candidates belonging to backward classes in States other than Delhi could hold good for the purpose of recruitment to the post of primary and nursery teachers in Municipal Corporation of Delhi in the National Capital Territory of Delhi. An ancillary question would also arise as to whether the Other Backward Classes (for short 'OBCs') of the States other than Delhi can be treated as OBCs in Delhi and can be extended the benefits related thereto in Delhi.

The facts leading to the present cases, in brief, are as follows:

Applications were invited from Indian citizens for appointment to the posts of primary and nursery teachers in the Municipal Corporation of Delhi on 16.7.1996. In the course of the notification the following was mentioned by a Note :

"NOTE : Candidates, seeking reservation as ST/SC/OBC/Exs/OH may submit the prescribed certificate from the competent authority in support of their claim with applications. The reservation policy to the categories of ST/SC/OBC/Exs and Physically Handicapped candidates shall be followed in accordance with the latest

policy of Central/Delhi Government."

The respondent-candidates claimed to belong to OBCs on the basis of certificate issued in a State other than the Government of National Capital Territory of Delhi. The applications filed by the respondent- candidates stood rejected. The respondents filed writ petitions before the High Court and the High Court by a common order made on 10.3.1998 held that the advertisement issued by the Municipal Corporation of Delhi did not indicate the Form in which the OBCs certificates have to be filed in respect of posts arising in the National Capital Territory of Delhi and, therefore, there was no obligation on the respondents to produce such certificate from the prescribed authorities in Delhi; that the obligation to produce the certificate from authorities in Delhi could not be fulfilled by candidates coming from outside Delhi and, therefore, what is impossible could not be expected to be fulfilled by the respondents and on that basis, the High Court directed to treat the applications filed by the respondents to be in order and proceed to make selections. It is this order that is in challenge before us.

Shri A.K. Ganguli, the learned Senior Advocate appearing for the appellants, submitted that a person belonging to a particular group in OBC in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment or education in that State, as such question will have to be examined with reference to situation in the State to which he migrates. He placed reliance upon the decision of this Court in *Action Committee on Issues of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & Anr. v. Union of India & Anr.*, 1994 (5) SCC 244, in which the question in relation to the interpretation of Articles 341 and 342 of the Constitution arose for consideration as to whether a person belonging to SC/ST in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment or education. In that case, this Court relied upon the decision in *Marri Chandra Shekhar Rao v. Dean, Geth G.S. Medical College and Ors.*, 1990 (3) SCC 130. Again in relation to Scheduled Castes and Scheduled Tribes this Court in *Dadaji alias Dina v. Sukhdeobabu & Ors.*, 1980 (1) SCC 621, considered the question as to whether "Gond" caste would include "Mana" or not. This Court examined the provisions of Articles 341 and 342 of the Constitution and the Representation of Peoples Act, 1951 and held that it was not permissible where there are two communities with the same name, one having affinity with a particular tribe and the other having no such affinity and both cannot be treated as Scheduled Tribes.

The learned counsel appearing for the respondent-candidates, however, supported the judgment of the High Court and contended that when there was no specific mention in the notification as to the manner in which the certificates have to be produced before the appellants to indicate that the respondent-candidates belong to any particular OBC group and the view taken by the High Court is justified.

Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other State and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.

It is clear that the Government of India had notified on 15.11.1993 two model Forms of Certificates to be furnished by the OBC candidates seeking benefit of reservations. Form prescribed in Annexure 'A' thereto was required to be produced by candidates belonging to OBCs applying for appointment to posts under the Government of India and which certificate was to be verified from the prescribed authorities indicated therein and a Note was added thereto to the effect that for Government of the National Capital Territory of Delhi Annexure 'AA' was required to be fulfilled Annexure 'AA' prescribes a different kind of certificate which reads as follows:

"ANNEXURE 'AA' Form of Certificate to be produced by other backward classes applying for appointments to posts under the Government of National Capital Territory of Delhi.

This is to certify that _____ s/o _____ of village _____ District/Division _____ State _____ belongs to the _____ community which is recognised as backward class under the Government of NCT of Delhi notified vide Notification No. F.88(93)/91- 92/SC/ST/P&S/4384 date : 20.01.1995 published in the Gazette of Delhi Extraordinary Part-IV dated : and/or his family ordinarily reside(s) in the _____ District/Division. Division of the _____ State. This is also to certify that he/she does not belong to the Persons/Sections (Creamy layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel and Training O.M. No. 36012/22/93-Estt. (SCT) dated 08.09.1993.

Dtd:

Seal

District Magistrate
Dy. Commissioner etc.

----- NB a.
The Term 'Ordinarily' used here will have the same meaning as in Sec. 20 of the Representation of the Peoples Act, 1950.

b. For the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the NCT of Delhi, the certificate from the following authorities only will be accepted :-

- i). District Magistrate, Delhi
- ii). Addl. District Magistrate, Delhi.
- iii). Deputy Commissioner, Delhi.
- iv). Addl. Deputy Commissioner, Delhi.
- v). Sub-Divisional Magistrate, Delhi.
- vi). Executive Magistrate, Delhi."

A careful reading of this notification would indicate that the OBCs would be recognised as such in the Government of National Capital Territory of Delhi as notified in the Notification dated 20.01.1995 and further for the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the National Capital Territory of Delhi the certificates will have to be issued only by the specified authorities and certificates issued by any other authority could not be accepted. The Government of India has also issued instructions from time to time in this regard which indicated that a person belonging to OBC on migration from the State of his origin in another State where his caste was not in the OBC list was entitled to the benefits or concessions admissible to the OBCs in his State of origin and Union Government, but not in the State to which he has migrated. Thus the High Court lost sight of these aspects of the matter in making the impugned order in either ignoring the necessary notifications issued in regard to classification of OBC categories or in the matter of verification thereof. Thus the order made by the High Court in this regard deserves to be reversed.

However, one aspect has to be borne in mind and that is the respondent-candidates had made applications as if they belong to OBCs on the basis of the certificates issued by the State from which they migrated to the National Capital Territory of Delhi, but if the certificates issued in their original States of which they are permanent or ordinary residents were not good, the applications should have been treated as if they had been made in the general category and cases of the respondent-candidates ought to have been considered in general category. Therefore, to the extent, the applicants have attained necessary merit in the general list, they deserve to be appointed.

The learned counsel for the appellants, however, pleaded that the respondent-candidates having applied for the posts as if they belong to OBC groups their applications could not be treated as

falling under general category. We fail to appreciate this contention. The particulars furnished by the respondent-candidates clearly give in detail their general qualifications and eligibility. The only additional aspect stated by them in their respective applications or in the Certificates supported thereto is that they belong to OBC categories. Hence, their cases ought to have been considered in the general category as if they do not belong to OBC categories in the circumstances arising in this case.

We, therefore, in allowing these appeals, direct that the cases of the respondent-candidates shall be treated as if they do not belong to OBC groups but to fall under the general category and their cases shall be examined and they shall be appointed in the appropriate posts of primary and nursery teachers if they have attained the necessary merit in the select list. This exercise shall be done within a period of three months from today. It is brought to our notice that there are several vacancies still available with the appellants in this category of posts and no difficulty would arise in the matter of appointing the respondent- candidates to those posts. However, if any difficulty arises, it shall be the duty of the appellants to create appropriate posts and appoint the respondent-candidates to such vacancies falling under general category.

The order made by the High Court is set aside with modified directions set forth above. The appeals are allowed accordingly. No costs.