

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9564 OF 2016

Kum Sabitha Ramapoogu D/o
Chandra Sekhar Raju, Age: 19 years,
Occu. Student, R/o Railway Quarter
No. 304/4, DRM Office, Nanded,
District Nanded.

...PETITIONER

versus

1. The State of Maharashtra
Through its Principal Secretary,
Social Justice and Special Assistance
Department, Mantralaya, Mumbai.
2. The Commissioner,
Common Entrance Test Cell
Mumbai, having office at
305, Government Polytechnic Building
Ali Yawar Jung Marg, Bandra (E),
Mumbai- 400 051.

...RESPONDENTS

.....
Mr. Swapnil S. Rathi, Advocate for petitioner
Mr. V.M. Kangne, AGP for respondents
.....

**CORAM : R.M. BORDE AND
K.K. SONAWANE, JJ.**

DATED : 16th SEPTEMBER, 2016.

Order :-

1. Petitioner claims to be belonging to "*Madiga*", which is recognized as Scheduled Caste in the State of Maharashtra. The petitioner claims that said caste is also recognized in the State of Andhra Pradesh. The petitioner is possessing caste certificate issued by competent authority of the Andhra Pradesh. It cannot be the matter of dispute that petitioner originally belongs to State of Andhra Pradesh and is migrated to the State of Maharashtra. The petitioner is seeking admission to the

Medical College as against seat reserved for SC category. The claim of the petitioner cannot be considered in view of law laid down by the Supreme Court in the case of *Marri Chandra Shekhar Rao vs. Dean Seth G.S. Medical College and others* reported in (1990)3 Supreme Court Cases 130. The Supreme Court in paragraphs No. 13 and 14 of the said judgment has observed thus:-

“13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and part should be made nugatory. This is well-settled. See the observations of this Court in Sri Venkataramana Devaru & Ors. v. State of Mysore, where Venkatarama Aiyar, J. reiterated that the rule of construction is well-settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Articles 341 as well as in Article 342 do imply that the Scheduled Castes and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all to scheduled castes or tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated state it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business

or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Article 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind

that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Articles 341 read with Article 15(4) of the Constitution.

14. Our attention was drawn to certain observations in Elizabeth Warburton v. James Loveland. It is true that all provisions should be read harmoniously. It is also true that no provision should be so read as to make other provisions nugatory or restricted. But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression--'in relation to that state' or 'for the purposes of this Constitution'--its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted (Sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-Scheduled Castes or non-Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This

cannot be logical or correct result designed by the Constitution.”

2. In the matter of *Shweta Shantilal Vs. State of Maharashtra and others* reported in 2010(2) Bom. C.R. 497 the question framed for consideration before the full bench was “whether a person who was not ordinarily resident as on the date of the relevant Presidential Notification in the area that now constitutes the State of Maharashtra will be entitled to the benefit of reservation in the State?. The full bench has answered the reference in paragraph No. 26 of the said judgment, that in case of migrant belonging to a Scheduled Caste, not ordinarily resident as on 10-03-1950 in the area that now constitutes the State of Maharashtra and in case of S.T., considering Rule 5, on 06-09-1950, would not be entitled to benefits of reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of Origin.

3. In the matter of *Vishal Ashok Acharya Vs. Scrutiny Committee for verification of caste certificate through its Chairman and another* reported in 2015(6) Bom. C.R. 589 decided by division bench of this court, which one of us (Justice R.M. Borde) was a member, the issue was as to whether child born to person who has migrated from State of Karnatka and employed in State of Goa, he would entitle to claim benefits of reservation in the State of Goa i.e. State of migration, a reference is made to the Judgment of Constitution Bench in the case of *State of Maharashtra Vs. Milind and others* reported in 2001 B.C.R. 620 (SC) : (2001)1 SCC 4 in which a proposition is laid down that person is entitled to claim benefits of reservation in the said origin and not in the State of

migration.

4. In the matter of *Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the (State of Maharashtra and another vs. Union of India and another)* reported in (1994)5 SCC 244 the question before the Supreme Court was where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to state A migrates to State B where a caste or tribe with the same nomenclature is specified for the purpose of the Constitution to be a Scheduled Caste in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Schedule Tribes in State B?. While answering issue the Supreme Court has observed:

“13. Considering the observations in Kumbharies case, we may only refer to the following observations in Action Committee (Supra):

It must also be realised that before specifying the castes or tribes under either of the two Articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Government of State A, it is difficult to understand how that specification made 'in relation to that State' can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is 'for the purposes of this constitution'

meaning thereby the various provisions of the constitution which deal with Scheduled Caste/Scheduled Tribes. The Constitution Bench has after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a specially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope of blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the scheduled cases and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. The Constitution Bench summed up as under:

In other words, scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of the Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic in mind, then the

determination of the controversy in the instant case does not become difficult.”

5. In view of law laid down by the Supreme Court in the case of *Marri Chandra Shekhar Rao* as well as *Action Committee (supra)*, the contention raised by the petitioner that he is entitled to claim benefits in the state of Maharashtra i.e. State of Migration is not acceptable.

6. Writ petition, as such, is devoid of substance and stands dismissed.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[R.M. BORDE, J.]

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