

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 24880 of 2016

Between:

Sabbella Siri Manjoosha Reddy
Petitioner

..

Vs.

The State of Andhra Pradesh, rep. by its
Principal Secretary, Education Department,
Secretariat, Hyderabad and four others
Respondents

..

DATE OF JUDGMENT PRONOUNCED: 02.08.2016

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

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1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be

Yes/No

marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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>HEAD NOTE:

! Counsel for petitioner : Mr. M. Srinivasa Rao

^ Counsel for 1st respondent : The Government Pleader
for Education

^ Counsel for 2nd respondent: Mr. Taddi Nageswara Rao,
standing

of
counsel for Dr.NTR University
Health Sciences

^Counsel for respondents 3 to 5: NONE

? CASES REFERRED :

1) AIR 1995 SC 94

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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WRIT PETITION No. 24880 of 2016

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ORDER: (*Per VRS,J*)

The petitioner, who is the daughter of a couple who got married transgressing the barriers of Caste, has come up with the present writ petition seeking a Mandamus to

declare the action of the 2nd respondent-University in not considering the case of the petitioner for admission to under-graduate medical courses under the quota reserved for Scheduled Castes, in the certificate verification conducted on 14.07.2016.

2. Heard Mr. M. Srinivasa Rao, learned counsel for the petitioner, learned Government Pleader for Education appearing for the

1st respondent, and Mr. Taddi Nageswara Rao, learned standing counsel appearing for the 2nd respondent-University.

3. Admittedly, the petitioner's father belonged to the Reddy community, which is treated as a forward community. The petitioner's mother belonged to a community known as 'Mala', which is classified as a Scheduled Caste in the State of Andhra Pradesh under G.O.Ms.No.58, Social Welfare, dated 12.05.1997.

4. Claiming that she was born out of an inter-caste marriage and that she and her siblings were brought by her mother in her native place, according to the customs and practices prevailing in the Mala community, the petitioner applied for the issue of a community certificate and, accordingly, she was issued with a community

certificate by the Tahsildar, Anakapalli Mandal, Visakhapatnam District, on ...-07-2012. The said certificate was followed by a digitally signed certificate, dated 17.05.2013, reiterating that the petitioner belongs to the Scheduled Castes (Mala community).

5. On the basis of the said certificate, the petitioner applied for admission to the under-graduate medical courses, after appearing in EAMCET-2016. She was invited for certificate verification on 14.07.2016. But, during the certificate verification, the 2nd respondent-University, as per the advice given by the Officials of the Social Welfare Department present therein, came to the conclusion that the petitioner should be treated as belonging to the forward community, in view of the fact that her father belonged to the Reddy community. Therefore, the petitioner has come up with the above writ petition.

6. On 28.07.2016 when the writ petition came up for admission, we directed the learned standing counsel for the 2nd respondent-University to take notice and get instructions as to why an endorsement "pending caste" was made on the Registration-cum-Verification Form

issued to the petitioner.

7. Today, Mr. Taddi Nageswara Rao, learned standing counsel for the 2nd respondent-University, produced a brief note sent by the Registrar of the 2nd respondent-University, with reference to the claim made by the writ petitioner. The relevant portion of the brief note sent by the Registrar of the 2nd respondent-University is extracted as follows:

"It is submitted that the petitioner Ms. Sabbella Siri Manjoosha Reddy has appeared for EAMSET-2016 (MBBS/BDS courses) and secured Rank No.6982 with HT.No.953650041. The petitioner approached the Andhra University helpline center for certificates verification on 14.07.2016 as per the time schedule given by the University. She has produced a caste certificate as SC-Mala. On thorough verification by Assistant Social Welfare Officer, Anakapalli verifying that her father belongs to OC Reddy community and her mother belongs to SC-Mala and came to conclusion that the petitioner's certificate will be treated as OC candidate (copy enclosed).

It is submitted that the Chief Verification Officer after verification of her certificates contacted over by phone informing the issue to the Deputy Director, Social Welfare Department, that the caste certificate produced by the petitioner has not been considered as SC-Mala. The Chief Verification Officer has requested to attend the counseling in Open Category. The petitioner refused to go in Open Category on 14.07.2016. It is submitted that the petitioner again came for counseling on 16.07.2016. The authorities requested her to produce her father's Service Register. She has not produced the Service Register even before 6 PM on 16.07.2016.

It is submitted that the Camp Officer, Chief Verification Officer, Assistant Social Welfare Officer and the Verification team of the University sat together and discussed the issue based on the Supreme Court judgment in Civil Appeal No.654 of 2012, SLP Civil No.4282 of 2010 filed by Rameshhai Babhai Naika Vs. State of Gujarat and others on 18th January, 2012 on bench Aftab Alam, Ranjanaprakash Desai and came to conclusion that the father's caste should be considered to be treated as the category of the petitioner.

It is submitted that the petitioner came on 17.07.2016 to the helpline center at 9 AM and made a representation. The Chief Verification Officer asked several times to the father's Service Register and parents caste certificate before the end of the counseling, but she has failed to produce any one of her certificates before the end of the counseling on 17.07.2016.

It is submitted that the petitioner appeared before the SAAP authorities for verification of her certificates under Sports and Games category and under OC category at Dr. NTR University of Health Sciences, Vijayawada helpline center on 21.07.2016 as per the schedule notified by the University and treated her as a OC candidate for consideration under Sports quota. She has not submitted caste certificate on 21.07.2016."

8. In sum and substance, the stand taken by the 2nd respondent-University is that since the father of the petitioner belonged to a forward community, she was not entitled to be treated as belonging to the Scheduled Castes. The said conclusion of the University is purportedly based upon the decision of the Supreme Court in ***Rameshbhai Dabhai Naika Vs. State of Gujarat***

and others

decided on 18.01.2012 in Civil Appeal No.654 of 2012.

9. But, unfortunately, the 2nd respondent-University does not appear to have correctly appreciated the ratio *decidendi* in ***Rameshbhai case***. As seen from paragraph-2 of the judgment of the Supreme Court in ***Rameshbhai case***, the question that arose before the Supreme Court was as to what would be the status of a person, one of whose parents belongs to the Scheduled Castes/Scheduled Tribes and the other comes from a non-Scheduled Castes/non-Scheduled Tribes and as to what would be the entitlement of a person born to such parents, to the benefits of the affirmative action sanctioned by the Constitution.

10. After elaborate discussion of all the earlier decisions including the one in ***Valasamma Paul Vs. Cochin University and others*** (1996 (3) SCC 545), ***Punit Rai Vs. Dinesh Chaudhary*** (2003 (8) SCC 204), and ***Anjan Kumar Vs. Union of India and others*** (2006 (3) SCC 257), the Supreme Court summarized the principles that could be culled out from all the decisions, in paragraph-43 of its judgment in ***Rameshbhai case***. The said paragraph reads as follows:

In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well.

11. Therefore, it is clear that the Supreme Court did not say that a child born to a couple, who married transgressing the barriers of Caste, would take the community of his or her father and not that of his or her mother. On the contrary, the Supreme Court categorically pointed out that the answer to the question would depend upon the circumstances in which the child was brought up

and that the same was primarily one of facts.

12. In so far as the case on hand is concerned, the petitioner's mother has sworn to an affidavit in support of the writ petition claiming that after her marriage, she stayed only with her family in her Village and that the children were brought by her, according to the customs and practices prevailing in the community. It is, perhaps, on the basis of such a claim that the Revenue Department chose to issue the community certificate to the petitioner.

13. The nature of the enquiry to be made, as indicated in paragraph-43 of the decision of the Supreme Court in ***Rameshbhai case***, is such that the same has to be carried out only by the Revenue Department, which is empowered to issue community certificates. To put it differently, it is that authority, which is vested with the power to issue community certificates, which is competent to conduct an enquiry that is indicated in paragraph-43 of the decision of the Supreme Court in ***Rameshbhai case***. Once the authority competent to conduct a detailed enquiry, has come to the conclusion that the petitioner belongs to the Scheduled Castes and, consequently, issued a certificate to her, it is not open to any other authority, to question the validity of the same, except in

accordance with law. Neither the 2nd respondent-University nor the Officials of the Social Welfare Department are entitled to disregard the community certificate issued by the Revenue Department and make the said certificate a dead letter. So long as the community certificate issued by the competent authority is not cancelled and so long as the community certificate has not been referred for re-verification to any Scrutiny Committee constituted, in accordance with the judgment of the Supreme Court in ***Kumari Madhuri Patel and another Vs. Additional Commissioner, Tribal Development and others***^[1], the 2nd respondent-University cannot ignore the community certificate.

14. Therefore, the Writ Petition is allowed, directing the 2nd respondent-University to treat the petitioner as belonging to the Scheduled Castes (Mala community), on the basis of the certificate that she holds, so long as the certificate is valid and in force.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

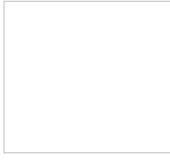
2nd August, 2016

Note: 1) Furnish C.C. by tomorrow.

2) LR copy be marked.

(b/o)

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Writ Petition No.24880 of 2016
(Per VRS,J)

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[\[1\]](#) AIR 1995 SC 94