

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10638 OF 2012

REKHA PRABHAKAR PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Barlinge S. R.

Addl.G.P. for Respondents No. 1 & 2 :

Mr. P. S. Patil

Advocate for Respondent No. 4 : Mr. K. M. Nagarkar

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 28th FEBRUARY, 2019

PER COURT :

1. The caste claim of the petitioner is invalidated on the ground that petitioner belongs to Shahapur in the State of Madhya Pradesh.

2. Mr. Barlinge, learned Advocate for the petitioner submits that petitioner belongs to 'Kunbi', Other Backward Class. It is recognised as Other Backward Class in the State of Madhya Pradesh, so also, in the State of Maharashtra. The forefathers of the petitioner were originally

resident of Maharashtra. From the year – 1949, the father of petitioner was residing at Shahapur in the State of Madhya Pradesh. After marriage the petitioner migrated to the State of Maharashtra. As the caste 'Kunbi' is the Other Backward Class in the State of Maharashtra, so also, in the State of Madhya Pradesh the petitioner is entitled for the validity certificate.

3. The learned Additional Government Pleader submits that upon enquiry conducted by the committee it transpired that as on the date of notification the father of the petitioner was a permanent resident of State of Madhya Pradesh and as such the committee has rightly passed the impugned order.

4. The Full Bench of this Court relied upon the judgment of the Apex Court in case of **Action Committee on Issue of Caste Certificate to Scheuled Castes and Scheduled Tribes in the Stated of Maharashtra and another Vs. Union of India and**

another reported in (1994) 5 SCC 244 and has concluded the issue. In the case 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* (supra) the Apex Court observed thus -

"6. Then in the case of *Action Committee* (supra), the question posed by the Constitution Bench was as under:-

"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 purposes 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 Scheduled Tribes in State B?"

In the course of the arguments, a contention was urged on behalf of the

Respondent, before the Supreme Court that all the arguments which were being advanced had been advanced in the case of Marri Chandrashekhar Rao (*supra*) and answered. The Supreme Court in emphatic terms observed "In fact we are in complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment". In other words, the Court held that even in respect of a person who belongs to a tribe notified as a ST in the State and having the same nomenclature is also notified as a tribe in the State of migration, yet such migrant would not be entitled to the benefits of reservation in the State of migration. Such persons would continue to get the benefit in the State of his origin. "

...

"13. Considering the observations in Kumbhare's 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 Governor 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 Castes/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 to 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 castes 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 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. The Constitution Bench of the Apex Court has clearly observed that even in respect of a person who belongs to tribe notified as ST in the State and having the same nomenclature is also notified as a tribe in the State of migration, yet such migrant would not be entitled to the benefits of reservation in the State of migration. Such person would continue to get the benefit in the State of his origin.

6. Even in the case of *Kusum Vs. State of Maharashtra and others (supra)* relied by the learned Advocate for the petitioner it is observed by the Apex Court that if the person had migrated prior to the year 1967 then she would be held to be a permanent resident of Maharashtra entitled to all benefits of Other Backward Class. The Apex

Court observed that migration ought to be prior to the notification.

7. In the present case, migration to the State of Maharashtra is after the notification.

8. In the light of above, tribunal has not committed any error.

9. If the petitioner was working on the basis of interim order passed by this Court, then the petitioner would be entitled for the salary for the period she was working. The Project Officer shall consider the salary bills in accordance with law, expeditiously and preferably within a period of three (03) weeks from today.

10. Writ Petition stands disposed of accordingly.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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