

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 13331 OF 2019

ORDER :

This writ petition is filed with the following prayer:

“i. declaring the action of the respondent No.1 in making the allotment of the list candidates under the Schedule Tribe Category hailing from outside the State of Telangana to the Respondent No.2 University in the Undergraduate Course B.A., LLB commencing from the academic year 2019 as illegal and arbitrary and contrary to the provisions of Articles 15, 21 and 342 of the Constitution of India and consequently set-aside the same;

ii. directing the 1st respondent to allot a seat to the petitioner in the 2nd respondent- National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad under the quota reserved for Scheduled Tribe category in Telangana State in the Undergraduate Course B.A., LLB commencing from the academic year 2019;”

2. Brief facts which are necessary for disposal of the Writ Petitioner are as follows:

The petitioner is a native of Telangana State, belongs to Lambadi Community, which is notified as Schedule Tribe in the State of Telangana by the Constitution (Presidential) Order, 1950 under Article 342 of the Constitution of India. In the light of guidelines provided in judgment of Hon'ble Supreme Court in the case of Varun Bharath v. Union of India, some of the law Universities along with University Grants Commission and Ministry for Human Resource Development have taken an initiative to conduct a Common Law Admission Test (CLAT) for admission to different National Universities in the Country. In pursuance to the same, a Memorandum of Understanding (MoU) was signed by the seven National Law Universities. In the light of MoU, the Committee consisting of all the Vice Chancellors of the Universities that the Test would be

conducted by the National Law Universities by rotation on the basis of seniority and that for the academic year 2019, the 1st respondent is the Convener for conducting the CLAT-2019 for admission to the Undergraduate Programme at 14 National Law Universities and also for Postgraduate Programme LLM through online. The petitioner applied for the CLAT 2019 seeking admission into the 2nd respondent University through online. In the said application, the petitioner given 2nd preference to the NALSAR, Hyderabad, claiming reservation under domicile and Schedule Tribe reserve category. He gave 3rd preference to West Bengal National Law University of Juridical Science, Kolkata and 3rd respondent as the 5th option. The petitioner appeared CLAT with Admit card No.119052307 and secured All India General Rank 8001 and All India ST Rank 38 and that he was allotted a seat at the 2nd respondent University under the domicile quota, for which he also paid the requisite fee. Since the father of the petitioner is an IPS Officer, working in the Karnataka State, he studied in the State of Karnataka, though born in the State of Telangana. The 1st respondent, through e-mail dated 29.06.2019 informed the petitioner that he was not eligible to seek admission in the light of the amendment and the circular made by the 2nd respondent University. In view of the same, the petitioner was constrained to take admission in the 3rd respondent Institute i.e., Gujarat National Law University, Gandhinagar, under the Schedule Tribe category. The 3rd respondent failed to consider the Schedule Tribe caste issued by the State of Telangana.

3. It is stated that since the 2nd respondent University is established under an Act of Hyderabad called the National Academy of Legal Studies and Research University Act, 1998, which is managed by a registered Society registered under the erstwhile Andhra Pradesh (now Telangan Area) Public Societies Registration Act, 1350 Fasli, the 1st respondent ought to have followed the Presidential Notification issued under Article 342 of the Constitution of India in respect of Telangana State, while allotting seats to the 2nd respondent University. However, the 1st respondent has not followed the same in spite of the law laid down by the Hon'ble Supreme Court in the case of **Marri Chandra Shekar Rao vs. Deon, Seth G.S. Medical College and others**¹, wherein the Hon'ble Supreme Court has held that the candidate recognized as member of SC/ST in his original State, on his immigration to another State, is not entitled to get benefit of reservation. The said view has been affirmed by the Constitution Bench of the Hon'ble Supreme Court in the case of **Action Committee on issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra v. Union of India**² and also in **Bir Singh v. Delhi Jal Board**³. It is stated that had the 1st respondent followed the law laid down by the Hon'ble Supreme Court in the decisions referred to supra, the petitioner would have all chances of getting selected in the 2nd respondent University, as such, the 2nd respondent treated un-equals as equals in violation of the rights guaranteed to the SC/ST under Article 46 of the Constitution of India. It is stated that as per the Constitution (Scheduled Tribe) Order, 1950 list of different castes as on today, the caste of the

¹ 1990 (3) SCC 130

² 1994 (5) SCC 244

³ (2018) 10 SCC 312

petitioner has been declared as Scheduled tribe in relation to the State of Telangana and that in view of the Presidential order, the petitioner is eligible and entitled to claim reservation against the seat reserved for Scheduled Tribe candidate in Telangana State. However, instead of considering the claim of a domiciled Scheduled Tribe Telangana State candidate, the 1st respondent has allotted seats under Scheduled Tribe Category from outside Telangana State in the 2nd respondent University, which is contrary to the Presidential Notification, 1950. Aggrieved by the same, the present writ petition is filed.

4. When the matter was listed on 04.07.2019, Sri S.Niranjan Reddy, learned Senior Counsel made submissions basing on the judgment of Hon'ble Supreme Court in **Bir Singh v. Delhi Jal Board** (supra). Since the learned Standing Counsel for the 1st respondent sought time to get instructions, the matter was directed to be listed on 08.07.2019, after issuing notice to the respondents 4 to 7 and also directed the 2nd respondent to notify the respondents 4 to 7 regarding filing of the Writ Petition, enabling them to contest the same.

5. When the matter was listed on 08.07.2019, I.A.No.4 of 2019 is filed for impleading the 8th respondent, who was admitted into 2nd respondent University, after filing of the Writ Petition.

6. Learned Senior Counsel appearing on behalf of the petitioner submitted arguments basing on the judgments of Hon'ble Supreme Court referred to supra and also in the case of **Melwin Chiras Kujur v. State of Maharashtra**⁴.

⁴ (2015) 17 Supreme Court Cases 549.

7. Learned Standing Counsel for the 1st respondent submits that since the petitioner is in waiting list, his case will be considered as one seat is vacant and he sought time. But, when it is asserted that the classes have already commenced, this Court has granted interim orders permitting the petitioner to attend classes, till further orders.

8. When the matter was listed on 10.07.2019, learned Standing Counsel for the 1st respondent submits that there is no dispute with regard to principle laid down in the Judgment of Karnataka i.e., ***Lolaksha v. The Convener (CLAT – 2009), Nalsar University of Law and others***⁵ and same is applicable to the facts and circumstances of this case, as contended by the learned Senior Counsel appearing for the petitioner. However, learned Senior Counsel submits that since the 1st respondent already admitted unofficial respondents, this Court can issue direction to the 2nd respondent University to create one more seat for accommodating the petitioner.

9. Sri S.Niranjan Reddy, learned Senior Counsel appearing for petitioner, while reiterating the submissions basing on the Judgment of Supreme Court in ***Melwin Chiras Kujur v. State of Maharashtra and others (supra)*** and also Judgment of Karnataka High Court in ***Lolaksha's*** case, submits that the unofficial respondents who belongs to Scheduled Tribe category of other States should not have been admitted in the 2nd respondent University, by virtue of the mandate under Article 342 of the Constitution of India. He also submits that the 2nd respondent is also a party to the said Judgment and the said Judgment has become final, as no

⁵ (2010) 1 AIR Kant 76

stay is granted in the writ appeal filed by the respondents therein. When the Judgment concluded by the Karnataka High Court became final, the respondents cannot contend otherwise, being a party to the Judgment.

10. Learned Standing Counsel for 1st respondent could not dispute the fact that the Judgment rendered by the Karnataka High Court against them covers the issue in the Writ Petition. He also submits that since it is purely legal issue, filing of counter is not necessary and unofficial respondents though served with notice, did not chose to contest.

11. Though notice was ordered to the learned Standing Counsel for the 1st respondent, though he appeared on 04.07.2019, inspite of the fact that the issue is decided and covered by the decisions of the Hon'ble Supreme Court as well as Judgment of Karnataka High Court to which, the 1st and 2nd respondents are parties, he failed to inform the Court about the same. Had he brought to the notice of this Court about the aforesaid decisions, considerable time of the Court could have been saved.

12. The issue raised in the writ petition is no longer *res integra*, since the learned Standing Counsel for the 1st respondent did not dispute that the principle laid down by the Hon'ble Apex Court as well as High Court of Karnataka in the judgments referred to supra. More over, the 2nd respondent is a party to the judgment before the High Court of Karnataka i.e., **Lolaksha v. The Convener (CLAT – 2009), Nalsar University of Law and others(supra)**. However, the learned Standing Counsel for the 1st respondent very strangely submits that the 2nd respondent has not contested the matter, but only stated that Writ Appeal is filed, which was

also dismissed for default and that no stay order is produced before this Court staying the order of the learned Single Judge. Even otherwise, the High Court of Karnataka also relied on the following judgments of Hon'ble Supreme Court as well as other High Courts, to which, the 1st and 2nd respondents are parties, i.e., (1990) 3 SCC 130, Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Others, (1994) 5 SCC 244, Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another, AIR 1960 SC 1080, Kavalappara Kottarathil Kochuni @ Moopil Nayar v. States of Madras and Kerala, (1993) 2 SCC 130, R.S.D.V. Finance Company Private Limited v. Shree Vallabh Glass Works Limited, (1994) 5 SCC 459, Shrikant Bhalchandra Karulkar and Others v. State of Gujarat and Another, AIR 1963 SC 649, M.R. Balaji and Others v. State of Mysore and Others, . (2003) 9 SCC 294, Union of India v. R. Rajeshwaran and Another, (1989) 2 SCC 145, Deepak Sibal v. Punjab University and Another, (1971) 2 SCC 293, D.N. Changhala v. State of Mysore and Others, (2005) 3 SCC 1, S. Pushpa and Others v. Sivachanmugavelu and Others, 1986 Supp SCC 285 : AIR 1986 SC 1043, Om Prakash Shukla v. Akhilesh Kumar Shukla and Others, (2002) 2 SCC 615, Suneeta Aggarwal v. State of Haryana and Others, (1995) 3 SCC 486, Madanlal and Others v. State of J & K and Others, SLP (Civil) No. 24237/2005 disposed of 4-8-2009, Subhash Chandra and Another v. Delhi Sub-Ordinate Services Selection Board and Others, (2005) 1 SCC 394, E.V. Chinnaiah v. State of A.P. and Others, (2004) 4 SCC 513 : AIR 2004 SC 1861, State of Tamil Nadu and Others v. S.V. Bratheeb (Minor) and Others, AIR 2002 P & H 103, Depak Makkar v. Kurukshetra University, Kurukshetra and Others, (2004) 1 SCC 530, Chandigarh Administration and Another v. Surinder Kumar and Others. Since the respondents 1 and 2 are parties in the aforesaid judgment, they cannot contend contra, which is hit by the principles of *res judicata*.

13. The Hon'ble Supreme Court, while dealing with the identical issue in the case of (a) **Melwin Chiras Kujur v. State of Maharashtra (supra)**, it is held as follows:

“8. The legal position as rightly pointed out by the learned counsel for the appellant has been firmly settled by the two decisions of the Constitution Bench referred to by us in the earlier paragraphs. Benefits of reservations are not available to those migrating from one State to the other even if such candidates belong to the same caste. That part of the controversy, therefore, stands concluded and does not require any further elaboration...”

(b) In **Lolaksha's** case the Karnataka High Court by relying on several Judgments of Supreme Court clearly held at para-38 as follows;

“38. It is well established that a judgment is a law for what it lays down and not for what can be logically deduced from it. Therefore, without entering into the controversy as to what is the effect of the judgments in *Subhash Chandra's case* rendered by the Bench consisting of two Hon'ble Judges on the judgment rendered by the Bench consisting of three Hon'ble Judges in Pushpa's case and without there being any need to further go deep into this aspect, it has to be held that in the light of the judgments in *Marri Chandra Shekhar Rao* and *Action Committee* cases which apply in all force to the facts and circumstances of the present case, the 2nd respondent-University could not have extended reservation to the Scheduled Castes and Scheduled Tribes of other States ignoring the Presidential Order, 1950 declaring certain castes as Scheduled Castes and Scheduled Tribes in relation to State of Karnataka.”

(c) In **Bir Singh v. Delhi Jal Board(supra)**, the Hon'ble Supreme Court held as follows:

“28. After referring to various provisions of the Constitution of India, the background in which the Presidential Orders were issued and several earlier judgments of this Court, it was held as under: (*Marri Chandra case* [*Marri Chandra Shekhar Rao v. Seth G.S. Medical College*, (1990) 3 SCC 130 : 1 SCEC 382] , SCC pp. 138-39, para 9)

“9. It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. *The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country.* This, however, is a different problem whether a member or the Scheduled Caste in one part of the country who migrates to another State or any other Union territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.”

29. In *Marri Chandra Shekhar Rao* [*Marri Chandra Shekhar Rao v. Seth G.S. Medical College*, (1990) 3 SCC 130 : 1 SCEC 382], rejecting the contention that (SCC p. 143, para 13) a member of Scheduled Castes/Scheduled Tribes should get the benefit of the status 'for the purpose of the Constitution throughout the territory of India', it was observed that if such contention is to be accepted the expression "In relation of that State" would become nugatory.

33. The issue has to be viewed from another perspective. If a member of a Scheduled Caste/Scheduled Tribe of Andhra Pradesh who had migrated to Maharashtra is to be given the benefit of reservation it will amount to depriving a member of a Scheduled Caste/Scheduled Tribe of Maharashtra by reducing the reservation earmarked for them.

34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'."

Though the Hon'ble Karnataka High Court rendered decision in respect of persons belong to Schedule Caste community under Article 341 of the Constitution, but the same principle can be adopted *mutatis mutandis* for Scheduled Tribe persons also, as Articles 341 & 342 are in *para materia*.

Since the 1st and 2nd respondents blatantly violated the law laid down by the Hon'ble Supreme Court as well as High Court of Karnataka and made admissions, the same have to be set aside. Though the High Court of Karnataka have saved the admissions of the candidates, who were admitted in violation of Presidential Order under Article 341 of the Constitution of India, but there the challenge was after a period of two months, but in the present case, the petitioner immediately approached this Court by way of this Writ Petition, after admissions.

In view of above facts and circumstances, the admissions of respondents No.5 to 8 made under the Schedule Tribe category hailing

from outside the State of Telangana to the 2nd respondent University in the undergraduate course B.A, LLB for the academic year 2019, is illegal and arbitrary and same is liable to be set aside and accordingly set aside.

14. The petitioner claims to have secured All India rank No.38 under ST category. Learned Standing Counsel for the 1st respondent, on instructions, submitted that the petitioner is in 1st position in waiting list of ST category.

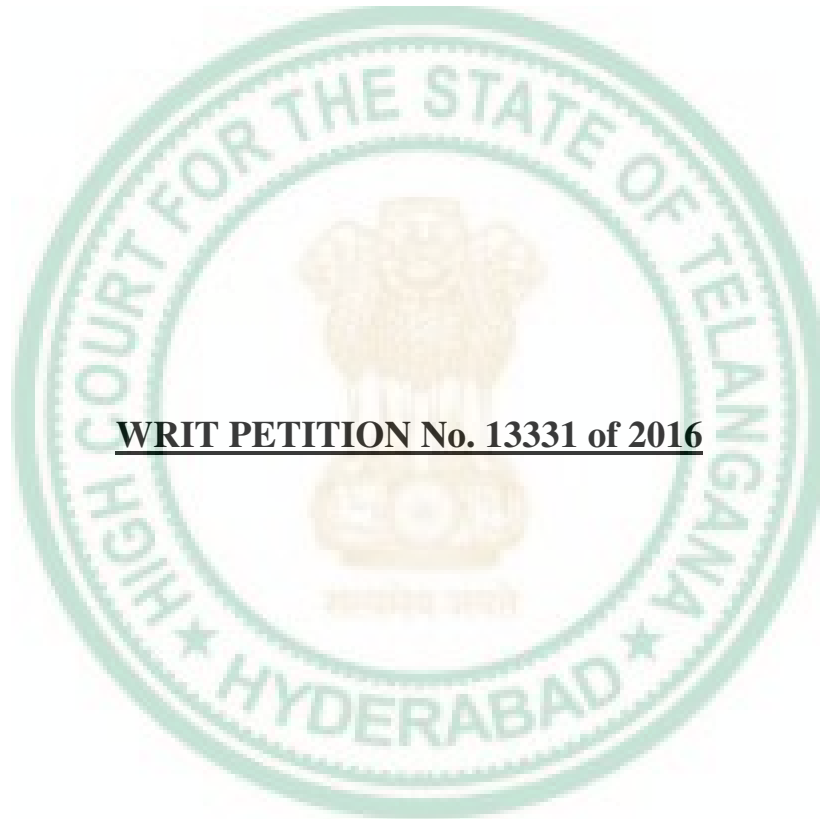
In view of the same, the respondents 1 & 2 have to make admissions under Schedule Tribe category in terms of Presidential Order with reference to Article 342 of the Constitution of India, by considering the merit list from among the ST candidates belonging to the State of Telangana in respect of four seats, said to have been reserved for ST category in Telangana State in undergraduate course B.A, LL.B. Basing on the same, if the petitioner is meritorious among those ST candidates, then the petitioner is entitled to a seat along with other meritorious students in that category.

Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

10.07.2019
tk/kvs.

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



WRIT PETITION No. 13331 of 2016

10.07.2019

tk/kvs