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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8780/2019 & CM No.36311/2019 & CM No.
36310/2019**

RUMY CHOWDHURY

..... Petitioner

Through: Mr Pranjal Kishore, Advocate.

versus

THE DEPARTMENT OF REVENUE , GOVERNMENT
OF NCT, DELHI & ANR.

..... Respondents

Through: Mr Ramesh Singh, Standing
Counsel, GNCTD with Mr
Shadan Farasat, ASC, Ms
Rudrakshi Deo and Mr Chirayu
Jain, Advocate for R-1.
Mr Amit Bansal with Mr Aman
Rewaria, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.08.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning Office Orders dated 26.11.2015 and 07.03.2017, to the extent that the said Office Orders require the applicant to produce a caste certificate of a relative from the paternal side, for the purpose of issuance of a caste certificate. The petitioner also impugns an order dated 31.07.2019, whereby the petitioner's request for caste certificates in respect of her two children (boys aged above 17 years and 15 years) has been rejected.

2. The petitioner is a senior officer of the Indian Air Force. She claims that she hails from the State of Assam. She claims that she belongs to the *bania* community, which she asserts is a Scheduled Caste in the State of Assam.

3. The petitioner was married in the year 1999 to a person belonging to a forward caste. Subsequently, matrimonial disputes arose between the petitioner and her husband and she filed for divorce in the year 2005. The petitioner's marriage was ultimately dissolved in the year 2009. The petitioner states that her children, who were then aged 4 years and 1 year, have been living with her since then. She also asserts that the said children had never lived in the company of their father, who has since remarried.

4. The petitioner is a serving officer of the Indian Air Force and at the material time, was posted at Delhi. Both her children were students in Mount St. Mary's School, which is one of the renowned schools of Delhi. They completed bulk of their school education in Delhi at the aforementioned school. The younger child commenced his school education in Delhi and continued till the eighth standard. The elder child was admitted to the said school in the second standard and completed his schooling from the said school. The petitioner was thereafter posted in Hyderabad in the year 2016. It is relevant to note that the elder child of the petitioner continued his studies in Delhi and completed his schooling in the year 2017. The younger of the two siblings continued his education at Hyderabad after the year 2016.

5. It is material to note that both the children of the petitioner have adopted the surname of their father, which indicates that they are of a forward caste.

6. The petitioner had filed applications for obtaining caste certificates for both of her children certifying that they belonged to a Scheduled Caste. The petitioner asserted that both children are not from a forward community and they have grown up in the community to which the petitioner belongs. In the aforesaid context, the petitioner had claimed that her children were entitled to obtain caste certificates certifying them as belonging to a scheduled caste, notwithstanding that their father belonged to a forward caste.

7. The applications filed by the petitioner were not processed. Aggrieved by the same, the children of the petitioner filed a writ petition (through the petitioner) being W.P.(C) 4947/2017 before this Court. The said petition was disposed of by an order dated 05.07.2018, granting liberty to the petitioners therein (the petitioner's children) to file their respective applications in the prescribed mode (online). This direction was subsequently modified to permit filing of the application in the physical form.

8. It is relevant to note that this Court had noticed that apart from not processing the applications filed by the petitioners (the two sons of the petitioner), the petition also indicated another controversy regarding whether the petitioners therein were entitled to caste certificates on the basis of the caste of their mother. The petitioners had relied upon the

decision of the Supreme Court in ***Rameshbhai Dabhai Naika v. State of Gujarat and Others: (2012) 3 SCC 400*** in support of their case that the petitioners therein were entitled to caste certificates. In the order dated 05.07.2018, this Court had referred to the relevant passage from the said decision, which is set out below:-

“55. 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 as a member of the community to which her mother belonged not only by that community but by the people outside the community as well.”

9. This Court had directed the respondents to take into account the aforesaid decision and consider the application filed by the petitioners therein. The petitioners were also granted liberty to furnish all material as they considered necessary to establish that they are entitled to Scheduled Caste Certificates on the basis of the said decision.

10. The applications filed by the children of the petitioners were rejected by an order dated 14.08.2018. The only reason indicated in the

said order for rejecting the applications was non submission of a caste certificate from the paternal side.

11. Aggrieved by the said order dated 14.08.2018, the petitioners (the two sons of the petitioner herein) filed a writ petition, being W.P. (C) 9424/2018. The said petition was allowed by an order dated 07.09.2018 and the order dated 14.08.2018 was set aside as being unreasoned. The respondents were directed to consider the case set up by the petitioners and take an informed view. The respondents were further directed to pass a speaking order.

12. The respondents considered the representation filed by the petitioner and passed the impugned order dated 31.07.2019, rejecting the applications for issuance of a caste certificate. A plain reading of the said order indicates that the respondents found that there was no material to substantiate the claim that petitioner's sons had grown up in the community of the relatives on their maternal side.

13. Admittedly, the petitioners have not been able to produce any evidence or material to establish that they have "*suffered the deprivations, indignities, humiliations and handicaps like any other member of the community*" to which the petitioner belongs.

14. The learned counsel appearing for the petitioner relied upon the decision of the Division Bench of the Bombay High Court in ***Deepika Yogeshwar Nandanwar v. State of Maharashtra and Ors.: 2008 (3) Mh.L.J. 872*** and drew the attention of this court to Paragraph 27 of the said decision, which reads as under:-

“27. But in this connection it is necessary to refer to the judgment of the Supreme Court in ***State of Maharashtra v. Ravi Prakash Babulalsing Parmar's case (supra)***. In that case the High Court had proceeded on the premise that once the surname of the candidate tallied with the name of tribe, which finds mention in one or the other entries of the schedule appended to the 1976 order made in terms of Article 341 of the Constitution of India, the same must be treated to be sacrosanct and no enquiry in relation to the correctness of the said certificate can be gone into by the Scrutiny Committee. The Supreme Court observed that these observations of the High Court were not only contrary to the judgments of the Supreme Court but also fell short of the ground realities. Therefore, surname by itself is not indicative of the caste. We, therefore, cannot go by the fact that claim of certain Nandanwars coming from Achalpur that they are Halbis has been rejected by the Amravati Scrutiny Committee. This is more so because the petitioner has sworn an affidavit in the present case and stated that those 29 persons are not her blood relatives. We have accepted this statement. The petitioner's father is present in the court. We asked learned Counsel for the petitioner whether he confirms that those 29 persons are not his blood relatives. The petitioner's father through his lawyer made a statement for himself and on behalf of the petitioner that those 29 persons are not his blood relatives. He has stated that they are not related to him from paternal side. We have accepted this statement. The petitioner's father is a doctor. He must know the consequences of making a false statement in the court. In case this statement made by the petitioner and her father prove to be false, they are liable to be prosecuted. If any of these 29 persons try to establish that they are relatives of the petitioner and her father and establish the relationship, the petitioner and her father will not only be prosecuted but they will be stripped of their degrees and all the benefits they have

taken on the basis that they belong to Halbi tribe. We have made this known to the petitioner's father who is present in the court.”

15. He contended that the fact that both the applicants had adopted the surname of their father, who is of a forward caste, did not disentitle them to caste certificates certifying them as belonging to a Scheduled Caste.

16. The contentions advanced by the petitioner are unpersuasive. There is no dispute that the surname adopted by a person would not by itself be determinative of his caste, if it is established that he had grown up in the community of one of their parents who belonged to a backward class. Concededly, a surname is not the sole criteria and the question whether the applicant, whose one parent was from a forward caste, belongs to a notified caste is required to be examined keeping into account the relevant facts of the case. There is also no controversy as to the standards to be applied in determining whether an applicant ought to be granted a caste certificate certifying the applicant to belong to a Scheduled caste on their maternal side. The said standards have been clearly set out in the decision of the Supreme Court in **Rameshbhai Dabhai Naika** (*supra*).

17. However, in the facts of the present case, there is no material on record to establish that the two sons of the petitioner have suffered any of disadvantages of persons belonging to the Scheduled Caste/Scheduled Tribe.

18. Both the children of the petitioner have completed substantial portion of their education in New Delhi in and there is no material that the environment in the school had placed them in any disadvantageous position as compared to students belonging to a forward class. The said school is run by the Society of St Patrick. The school prides itself for inculcating high ideals amongst its students.

19. The petitioner herself is a senior officer of the Indian Air Force. It is well accepted that persons from the Indian Armed Forces live in a secluded and protected environment (cantonment area). There is little scope for any caste discrimination in such an environment.

20. More importantly, the onus of establishing that the children of the petitioner had suffered any of the disadvantages of belonging to a Scheduled Caste rested with the petitioner. It is apparent from the impugned order that no material whatsoever had been produced to establish the same. It cannot be ignored that both the children of the petitioner bear the surname of their father and thus, holding out a clear representation as belonging to a forward caste. This also puts to rest any doubt that one may have regarding the two children suffering any disadvantage of belonging to a backward class.

21. In view of the above, this Court finds no infirmity with the impugned order and no interference with the same is warranted.

22. Insofar as the impugned Office Orders are concerned, the petitioner's challenge to the same is unmerited. As explained, the practice of issuance of a caste certificate based on the caste of the father

is not without exceptions. In certain cases, where it is established that the children have grown up in a notified community or tribe and have suffered all the disadvantages and deprivations belonging to such community, the Office Orders could not come in the way of the issuance of the caste certificate certifying that the applicants belong to the caste of their mother.

23. The petition and the pending applications are, accordingly, dismissed.

AUGUST 14, 2019
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VIBHU BAKHRU, J



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