HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.801/2020

Smt. Anita Meena, D/o Sri B. L. Meena,
permanent resident of Village & P.O – Mandai Mandha,
P.S – Khatushyamji, District – Sikar, Rajasthan,
Sub-Division – Dataramagarh, Pin – 332401.

…….. *Petitioner(s).*

Vs.

1. The State of Tripura, represented by the Secretary to the Department of Health & Family Welfare, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O – Kunjaban, P.S. – West Agartala, District – West Tripura.
2. The Principal, Agartala Government Medical College, having its office situated at 79 Tilla, P.S. – N.C.C, District – West Tripura, Agartala.
3. The Convenor, Agartala Government Medical College, having his office situated at 79 Tilla, P.S. – N.C.C, District – West Tripura, Agartala.
4. The Chairman, Administrative Committee, Agartala Government Medical College, having his office situated at 79 Tilla, P.S. N.C.C., District – West Tripura, Agartala.

…….. *Respondent(s).*

_B_E_ F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. Somik Deb, Advocate.

For Respondent(s) : Mr. Debalaya Bhattacharjee, Govt. Adv.

Date of hearing & judgment : 11th December, 2020.

Whether fit for reporting : No.

J U D G M E N T (O R A L)

The petitioner has prayed for a direction to the respondents to consider her candidature for admission in MBBS course for the academic session 2020-2021 as a person belonging to Schedule Tribe community of State of Tripura.

[2] Brief facts are as under :

The petitioner and her family hail from the State of Rajasthan. They belong to Meena community which is a notified Scheduled Tribe recognized in the State of Rajasthan. The petitioner was issued a certificate dated 21st June, 2010 by the Tehshildar of Databara District of State of Rajasthan certifying that the petitioner belongs to a Meena community which is a Scheduled Tribe in the State of Rajasthan.

[3] The father of the petitioner is serving in Border Security Force. He was transferred to Tripura and was posted in the State for the period between 15th July, 2003 to 16th February, 2018. The petitioner pursued her Higher Secondary education in the State of Tripura. She was admitted to Kendriya Vidyalaya, Bagafa, from where she passed her Higher Secondary Examination with the Central Board in May, 2015. The Health & Family Welfare Department, Government of Tripura, had issued a notification dated 13th November, 2017 which besides other things

provided for eligibility criteria for appearing in the State Quota/Domicile Seats for technical education. This notification in particular provided that *"……. In case a candidate is not permanent resident of Tripura but his/her parent is an officer on deputation to the Government of Tripura/Officer of the Central Government working in Tripura and has served in Tripura continuously for a period of 3(three) years or more and due to appear/passed Higher Secondary Examination from an Institution of Tripura, he/she will be eligible for appearing in the Counselling".*

[4] Subsequently for the academic session 2020, the Government of Tripura published yet another eligibility criteria/rules, relevant portion of which reads as under :

> *"Clause -3*
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> *In case a candidate is not permanent resident of Tripura but his/her parent is either on deputation as Officer/employee to the Govt. of Tripura or an Officer/employee of the Central Govt. working in Tripura and has served in Tripura continuously for a period of 3(three) years or more prior to appearing in the qualifying examination from any School/Institute of Tripura."*

[5] The petitioner on the basis of her continuous residence in the State of Tripura for over three years, appeared in the Joint Entrance Examination for medical seats against State quota for candidates belonging to Scheduled Tribe in the year 2018. Along with her application she produced her Scheduled Tribe certificate. Initially her application was

accepted, however, subsequently the Government issued a corrigendum on 5th June, 2019 declaring that the petitioner cannot get admission in the Scheduled Tribe category, however, she is eligible for admission under unreserved category of candidates. The petitioner did not challange this order. She did not get admission in the open category in the said year. For the academic year 2020-2021 the petitioner again appeared in the Joint Entrance Examination and once again claimed the benefit of Scheduled Tribe reservation. In the first round of counselling, she participated but her candidature was considered as an unreserved category ignoring her Scheduled Tribe certificate. Counsel for the petitioner pointed out that the second and third round of counselling is still pending, that the petitioner has a rightful claim to be considered as a Scheduled Tribe student which the respondents are unlawfully denying to her.

[6] Appearing for the petitioner learned counsel Mr. Somik Deb submitted that as per the policy of the State Government circulated in the year 2017 as well as 2020, the petitioner qualifies for the State quota seats for medical education. Once the State policy recognizes the petitioner as a local student and domicile of State of Tripura, the petitioner must be allowed to carry all her advantages including the status of a person belonging to Scheduled Tribe. He submitted that merely because Meena community is recognised as a Scheduled Tribe in State of Rajasthan,

would make no difference in the present case since as per the State Government policy, the petitioner is considered as a local resident or a domicile. Learned counsel fairly stated that the proposition that a member of Scheduled Caste or Scheduled Tribe recognized in one State would not carry the status upon migration to other State is well settled. However, in the present case, the situation is different. The petitioner is recognized as a local resident or domicile of State of Tripura by way of a deeming fiction. Once such deeming fiction is created, it must be allowed its full play which would imply that the petitioner would carry her caste status also. The counsel drew my attention to following decisions. Some of these decisions he relied upon, the others he sought to distinguish.

(i) Louis De Raedt Vs. Union of India and Ors. *reported in* ***(1991) 3 SCC 554,***

(ii) Subhash Chandra and Anr. Vs. Delhi Subordinate Services Selection Board and Ors. *reported in* ***(2009) 15 SCC 458,***

(iii) Union of India and Ors. Vs. Dudh Nath Prasad *reported in* ***(2000) 2 SCC 20***

and

(iv) Bir Singh Vs. Delhi Jal Board and Ors. *reported in* ***(2018) 10 SCC 312.***

[7] In my view, the law on the subject is sufficiently clear. In case of ***Subhash Chandra and Anr. Vs. Delhi Subordinate Services Selection Board and Ors.****(supra),* it was held that Article 16(4) of the Constitution cannot be made applicable to grant benefit of reservation for SC/STs to those who have migrated to another State or Union Territory. They are not members of Scheduled Castes and Scheduled Tribes in recipient State or Union Territory.

[8] In case of ***Bir Singh Vs. Delhi Jal Board and Ors.****(supra),* a Constitution Bench of the Supreme Court considered several issues of reservation of Scheduled Castes and Scheduled Tribes in State or Union Territory other than to which the person belongs. Special focus of the Supreme Court in the said case was whether the principle that upon migration to another State or Union Territory, members of Scheduled Caste or Scheduled Tribe would not carry their status, would apply to the Union Territory of Delhi. Speaking for the majority *Gogoi, J* reiterated the principle that if a member of a Scheduled Caste or Scheduled Tribe of one State who migrates to another State is to be given benefit of reservation, it will amount to depriving a member of Scheduled Caste or Scheduled Tribe of the State of migration by reducing the reservation earmarked for them. It was, therefore, concluded that a person belonging to Schedule Caste in one State cannot be deemed to be Schedule Caste person in

relation to any other State to which he migrates for the purpose of employment or education. With respect to the Union Territory of New Delhi, however, the majority view was that this principle would not apply particularly considering the historical background of the Union Territory of New Delhi and the kind of cadre composition of employees of the Government in the said region. The relevant portion of the majority opinion can be reproduced below:

> *"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. It is in this context, in Marri Chandra Shekhar Rao, that the Constitution Bench observed as under:*
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> > *"14. ....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."

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'.

* * *

69. Accordingly, we answer the question referred in terms of the views expressed in para 38 of this opinion. We further hold that so far as the National Capital Territory of Delhi is concerned the pan India Reservation Rule in force is in accord with the Constitutional scheme relating to services under the Union and the States/Union Territories."

[9] Bhanumati, J recorded a separate opinion. With respect to the first proposition of a member of Scheduled Caste or Scheduled Tribe of one State not being able to carry the caste status upon migration to another State, she concurred with the majority opinion which she recorded as under :

> *"72. I have gone through the judgment proposed by His Lordship Ranjan Gogoi, J. I agree with the following conclusions arrived at paras 34 and 38 and the reasonings thereon.*
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> > *"A person notified as 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'....."*.
> >
> > *"..... It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Schedule Castes/Scheduled Tribes enumerated in the Presidential Orders for a particular State/Union Territory within the geographical area of that State/Union Territory (Union Territory added by me) and not beyond."*

However, with respect to the conclusion of the majority in relation to National Capital Territory of Delhi, she gave a dissenting judgment. Her final conclusions were as under :

> *"156. Insofar as the States, I agree with the majority view that a person who is recognised as a member of Scheduled Castes/Scheduled Tribes in his original State, will be entitled to all the benefits of reservation under the Constitution in that State only*

and not in other States/Union Territories and not entitled to the benefits of reservation in the migrated State/Union Territory.

157. Marri Chandra Shekhar Rao and Action Committee are applicable to the States and they are applicable with equal force to the Union Territories including Union Territory of Delhi. There cannot be any distinction between the States and the Union Territories. Likewise, there can be no distinction between Union Territory of Delhi and other Union Territories. When Presidential Orders of Scheduled Castes/Scheduled Tribes are notified for various Union Territories including Union Territory of Delhi extending PAN India reservation to the employment falling under the services of Union Territories including Union Territory of Delhi, will be against the Constitutional scheme and the law laid down in Marri Chandra Shekhar Rao and Action Committee.

158. Since there is centralised recruitment up to Group 'B' (Gazetted) services conducted by UPSC for the Central Civil Services posts in the States/Union Territories of India, there has to be necessarily PAN India reservation for Scheduled Castes/Scheduled Tribes for those recruitment conducted by UPSC. So far as Group 'B' and Group 'C' posts falling under services of Union Territories including Union Territory of Delhi for which recruitment is conducted by the respective Union Territories, benefit of reservation in employment (Article 16(4)) is to be extended only to those Scheduled Castes/Scheduled Tribes specified in the Presidential Order of the respective Union Territories. Insofar as the posts recruited by the Staff Selection Board of the respective Union Territories including the Union Territory of Delhi, there cannot be PAN India reservation for Group 'B', Group 'C' and Group 'D' posts falling under the services of various Union Territories and such PAN India reservation would be against the constitutional scheme and Marri Chandra Shekhar Rao and Action Committee."

[10] The issue with which we are concerned in the present petition is squarely covered by the unanimous opinion of the Constitution Bench judgment in case of ***Bir Singh****(supra)*. In case of ***Louis De Raedt****(supra),* the Supreme Court was considered with the question of domicile and that the said decision was not in context of a reservation in favour of Scheduled Caste or Scheduled Tribe. In case of ***Union of India and Ors. Vs. Dudh Nath Prasad****(supra),* the facts were very different. The parents of the respondent were ordinary resident of West Bengal. They also had some property in State of Bihar. The respondent was issued certificate of Scheduled Caste in the State of West Bengal. The Union Public Service Commission(UPSC) accepted his status as a Scheduled Caste, but later on doubted the validity of the certificate. The Supreme Court was of the opinion that there is a difference between domicile and residence and that the respondent's parents were ordinary resident of West Bengal and he, therefore, was correctly treated as a Scheduled Caste. As noted, the facts are very different. In the present case, the petitioner seeks the benefit of reservation in the State of Tripura though her community is recognized as a Scheduled Tribe in the State of Rajasthan.

[11] Merely because for the purpose of admission in medial course her residence within the State for over three years is considered sufficient, would not change the position. The concept of a "local resident" for the

purpose of admission in State quota seats has a vastly different purpose than reservation in favour of a reserved community. The petitioner may be treated as eligible for admission to State quota seats, nevertheless she cannot claim the benefit of her Scheduled Tribe statutes which is recognized as a Scheduled Tribe in the State of Rajasthan.

[12] In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)

HIGH COURT OF TRIPURA
सत्यमेव जयते

Sukehendu